

IN THE CIRCUIT COURT,  
FOURTH JUDICIAL CIRCUIT, IN  
AND FOR DUVAL COUNTY, FLORIDA

GENERAL JURISDICTION

CASE NO 95-00934-CA

DIVISION CV B

GRADY CARTER and  
MILDRED CARTER,

Plaintiffs,

vs.

BROWN & WILLIAMSON TOBACCO  
CORPORATION as successor by  
merger to THE AMERICAN TOBACCO  
COMPANY

Defendant.

PROCEEDINGS

Tuesday, July 23, 1996

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VOLUME II  
Pages 320 through 499

With that in mind, I'm going to distribute to each of you here, who I'll ask to identify yourselves for the record, those rules, an interesting provision of which I was unaware of until recently of which I have the authority to eject contesting media, so that if you-all don't basically agree, it means nobody gets to play, which I guess is probably a reasonable way of resolving the conflict

But with that, let me begin with you, sir If you would, tell me who you are and your media affiliation

MR LUDEKE My name is Jack Ludeke I'm with The Florida Times Union

MR FORTE My name is Bill Forte I'm the bailiff for the trial

MS SIERON Robin Sieron with WJXT

MR McCLURE Hal McClure, WJXT

MS BELL June Bell, Florida Times Union

MS FREELAND Lavonia Freeland, intern,  
WJKS

MR IVICE I'm Paul Ivce with The Daily Record

MR BEASLEY Britt Beasley, court administrator

PROCEEDINGS

Tuesday, July 23, 1996 1 20 p m

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(Present for this hearing in chambers are J W Prichard, Jr, Robert B Parrish, Gregory H Maxwell, Bill Forte, Jack Ludeke, Robin Sieron, Hal McClure, June Bell, Lavonia Freeland Paul Ivce, Britt Beasley and John Kroll )

THE COURT Good afternoon The lawyers tell judges a lot and judges need to learn to listen to lawyers, I guess, as a part of my job They forewarned me that the media might be a problem, and as it turns out, I discounted their comments out of hand -- and actually I don't think my discounting was inappropriate because, as I've overheard your discussions as we approached this trial, it sounds like you-all have resolved whatever difference you may have had

Your interest has caused me to turn my attention to the rules of judicial administration that govern media in the courtrooms. Our courtrooms, of course, are public forums and your access is assured subject to certain restrictions that are designed to maintain decorum and orderly procedures.

THE COURT Mr Forte, could you go to the courtroom and ask John Kroll from Court TV to join us He's the gentleman that was busily taping and placing equipment in the courtroom

MR FORTE Yes, sir

THE COURT While we are waiting on him, let me ask you if you could pass those around the room for me

THE COURT Since we have everybody from the printed media here, Jack, is it my understanding that you're going to be the still photographer in the courtroom?

MR LUDEKE Yes, sir

THE COURT And, Paul, is that your understanding, as well?

MR IVICE I accept that, as long as we agree on when we can get multiple photos to chose from within a reasonable time and manner. The last time we did this we ended up with one picture which we ended up not using I guess there was only one shot to be taken Our photographer did get in afterwards and did a shot that we used But in this situation I'm not sure this is possible

MR LUDEKE As far as what you need in hand, we now have an electronic darkroom so we don't

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1 make prints. We can produce a print out of the  
 2 Kodak printer off of a digital image. If your  
 3 people come in, we can look at the negatives  
 4 together and we can scan what they want into the  
 5 machine and print them something out. Is that  
 6 suitable?  
 7 MR IVICE I think so or else maybe just  
 8 select the three best that you're not using, and  
 9 we'll pick those up. I don't know as far as.  
 10 THE COURT Well, let me make sure I  
 11 understand.  
 12 MR IVICE In this case maybe we'll be  
 13 able to come over when you're doing that.  
 14 MR LUDEKE I think we can work it out.  
 15 THE COURT I can't dissent to the  
 16 particulars, but what I do want to get is an  
 17 assurance that any photograph that you take you will  
 18 have reasonable and timely access to it.  
 19 MR LUDEKE Yes, sir, I believe that that  
 20 can be done.  
 21 MR IVICE I think we will be able to  
 22 work it out. I know people over there and they were  
 23 cooperative the last time when it was more of a test  
 24 than anything to do that. And they did cooperate,  
 25 so I don't think it should be a problem. I mean, we

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1 do have later deadlines than they do, so I don't  
 2 think it should be a problem.  
 3 THE COURT Great.  
 4 Broadcast media. Mr Kroll, you joined us  
 5 a little late. I introduced everyone here. I don't  
 6 know that they know you. I've only recently met  
 7 you. This is John Kroll. You're with Court TV.  
 8 Actually you're an agent of Court TV. I understand  
 9 you're a local contractor.  
 10 MR KROLL Yes.  
 11 THE COURT Have you gotten your equipment  
 12 situated satisfactorily?  
 13 MR KROLL Yes, sir, we're all set up and  
 14 ready to go.  
 15 THE COURT Is there an agreement between  
 16 you and the various other broadcast media that are  
 17 interested with regard to access to the --  
 18 MR KROLL The ones that have approached  
 19 me, yes, sir.  
 20 MS SIERON The only concern I just  
 21 wanted to mention -- you mentioned an isolated  
 22 shot. I am going to need a shot of the judge, a  
 23 shot of the --  
 24 MR KROLL I'm sure I will get some of  
 25 that in there.

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1 MS SIERON As long as we're going to get  
 2 that. I have told Channel 17 that I'll give them a  
 3 dub of what we report.  
 4 MR KROLL I'm only going to do what I  
 5 feel is necessary, and I'm sure I'll have closeups  
 6 of everybody.  
 7 MR BEASLEY Except for the jurors'  
 8 faces.  
 9 MR KROLL Except for the jurors' faces.  
 10 THE COURT Okay. Jack, do you understand  
 11 as well that I do not think that the jurors' faces  
 12 should be photographed?  
 13 MR LUDEKE Yes, sir.  
 14 THE COURT Unless the attorneys have some  
 15 objection to that. My thought, and I haven't  
 16 discussed this with the jurors, is that they have  
 17 rights of privacy that we have not infringed upon by  
 18 their involvement in this case. And that absent  
 19 their consent, which I haven't had time to seek, nor  
 20 am I inclined to seek, that their faces should not  
 21 be broadcast either in a broadcast media or printed  
 22 media. Is that understood, Jack?  
 23 MR LUDEKE Yes, sir.  
 24 THE COURT John?  
 25 MR KROLL I'm sorry, Your Honor. I was

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1 reading --  
 2 THE COURT No jurors' faces are to be  
 3 recorded. Do you understand that?  
 4 MR KROLL Yes, sir.  
 5 THE COURT I've given you -- I don't  
 6 think you were here earlier -- and charging you with  
 7 the knowledge of these rules that govern the  
 8 proceedings, as are all of the persons here who have  
 9 had copies distributed to them.  
 10 The main thing is not to be disruptive, to  
 11 be as unobtrusive as you can, and I know those of  
 12 you that have done this before are aware of that.  
 13 There is some prohibition against movement during  
 14 the course of the proceedings.  
 15 Jack, have you done this before?  
 16 MR LUDEKE Yes, sir.  
 17 THE COURT So I don't expect to see you  
 18 wondering around the courtroom. Actually as we're  
 19 going to be set up today, I would suspect that your  
 20 best camera angle -- I don't pretend to be a  
 21 journalist, a photo journalist at all -- but it may  
 22 be as you enter the courtroom to the left, because  
 23 the attorneys that will be arguing will be facing  
 24 the jury.  
 25 And that's all that's going to happen.

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1 today is the argument of the attorneys, so there  
2 won't be any witnesses. And there is a screen  
3 placed in the courtroom, if you've had a chance to  
4 see it. It's going to block a major portion of what  
5 would otherwise would be a field or a view for you  
6 So you need to make a decision about where you're  
7 going to be and then remain there

8 MR LUDEKE If I'm shooting from -- as  
9 you enter the courtroom from the right-hand corner  
10 of the courtroom, in order to be able to see the  
11 plaintiff and the lawyer at the table and then  
12 perhaps getting -- the lawyers arguing the case in  
13 front of the jury sometimes turn to the side If  
14 the jury is out of focus from that angle but still  
15 visible, is that a problem, if they're not  
16 identifiable?

17 THE COURT So long as they're not  
18 identifiable, I don't have a problem with it And  
19 if you have any question about whether they are  
20 identifiable, you need to ask me

21 MR LUDEKE Yes, sir, I understand

22 MR IVICE Now, I assume that for the  
23 most part we're not going to have a problem with  
24 both of us seeking photos except openings, closings  
25 and possibly the verdict, and that during the

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1 evidence phase of the trial we'll either wait until  
2 the other one is done and not stand there for a long  
3 time so that during other phases of the trial we'll  
4 get our own pictures

5 MR LUDEKE We can work that out later,  
6 but I think that we can --

7 MR IVICE I mean, generally that you're  
8 not going to be shooting on a daily basis or other  
9 than the very highest points as I described, right?

10 MR McCLURE Yes

11 MR IVICE The only other issue I wanted  
12 to raise is the possibility of getting reserved  
13 seating for the media This would avoid possibly  
14 any other problems I know while we've been sitting  
15 in here all the other people monitoring the trial  
16 are filling up all the seats so the courtroom is now  
17 full

18 THE COURT Completely?

19 UNIDENTIFIED SPEAKER Yes, pretty much  
20 so.

21 THE COURT Well, I'm going to make room  
22 for you today, and I'll address the concern tomorrow  
23 about maybe reserving a seat for you. But I'll see  
24 that you get in today. Actually, I guess, Jack,  
25 you're the only one that needs to be there Well,

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1 that may not be true. I don't know whether the  
2 other reporters had planned to attend.

3 MR McCLURE I don't need to be in the  
4 courtroom I'll set it up for Robin and I'll leave.

5 THE COURT There may be some room on the  
6 left side of the courtroom as you face the exit. So  
7 if necessary I'll place some chairs over there for  
8 any of you that don't have seats, unless that's  
9 objectionable to counsel

10 MR PRICHARD I'm only concerned about  
11 not distracting the jury and this Court from doing  
12 what they need to do, and creating a circus inside  
13 of the bar is a good example It's a very small  
14 courtroom, as Your Honor is well aware, and I'm very  
15 concerned about that

16 I'm also concerned that movement --  
17 individuals slipping out of the courtroom all the  
18 time in the back, no problem But movement during  
19 the examination, direct or cross of a particular  
20 witness, those kinds of things can be very  
21 distracting and detract from the process I would  
22 suggest or recommend to the Court that the setups  
23 for the cameras that the agreed parties wish to  
24 implement be reviewed by the Court prior to the jury  
25 coming in the courtroom so that any difficulties can

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1 be ironed out at that time

2 THE COURT I will do that today I think  
3 I happened to be in place when Mr Kroll was setting  
4 up his equipment and setting out some needs that we  
5 had that will probably satisfy your concerns today  
6 But I will make a point of doing that every day

7 As Mr Prichard has indicated, movement,  
8 particularly if it happens that you are seated  
9 inside of the bar, is extraordinarily distracting  
10 and should be kept to an absolute minimum Movement  
11 outside of the bar is equally distracting but not as  
12 so, at least not quite as distracting But I'm  
13 going to discourage it, and I am not going to  
14 hesitate to announce when I believe that you are  
15 interfering with the proceedings And I will expect  
16 Mr Forte, our bailiff who is here today, to be  
17 diligent and vigilant to our concerns

18 Anything else that I need to take up with  
19 the media from the defense?

20 MR PRICHARD Your Honor, this is  
21 probably preaching to the choir I'm not sure that  
22 this isn't well-known This is not a sequestered  
23 jury, as you know, and the jurors are under strict  
24 charge by Your Honor, as is always the case, not to  
25 discuss this case with anyone

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1 And I would think that -- I don't know  
 2 this group here -- that walking up to someone on  
 3 their way out of the courtroom at the end of the day  
 4 or on a lunch break and shoving a microphone in  
 5 their face or whatever it might be, for a juror  
 6 could be particularly intimidating And I think  
 7 they would be fleeing back to the courtroom to  
 8 report to Your Honor  
 9 I'm not suggesting that that's what would  
 10 be done But I'm very concerned that the jurors not  
 11 get any more of a sense of fear that could be caused  
 12 by a circus-type arrangement or any type of  
 13 intimidation by the power of the press just because  
 14 of the fact that all of a sudden it's big news or  
 15 not And cognizant of Your Honor ruling to the jury  
 16 and your instructions to them, I would hope that our  
 17 folks here be mindful of that  
 18 MR MAXWELL On behalf of my clients,  
 19 Your Honor, I wish to share Mr Prichard's concern  
 20 THE COURT I'm sure that all our media  
 21 representatives here heard the concerns They are  
 22 the Court's concerns, as well I can't emphasis  
 23 enough the need for us to be orderly and respectful  
 24 and quiet  
 25 MS BELL I just wanted -- I'm with the

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1 Times-Union and want to emphasize that we don't talk  
 2 to jurors during the trial We make sure that when  
 3 we are discussing the case in the halls that there  
 4 are no jurors We're very sensitive to your  
 5 concerns  
 6 MR IVICE We know the rules  
 7 MR PRICHARD I assumed you did but  
 8 THE COURT We're making a record of your  
 9 knowing the rules  
 10 Anything else? Very good  
 11 I need to see the lawyers, but the balance  
 12 of you are excused.  
 13 Mr Forte, if there is a problem with  
 14 seating, if you could try to reasonably accommodate  
 15 those people who are the media here.  
 16 MR FORTE I have a few extra chairs in  
 17 the jury room, but they're kind of bulky and they  
 18 take up a lot of space  
 19 THE COURT Don't take them out, but see  
 20 what you can do  
 21 (Discussion off record)  
 22 THE COURT I needed to bring to your  
 23 attention via Mr. Forte, our bailiff, that juror  
 24 No. 7, Richard Prisock -- do you have him in mind  
 25 which one he is?

1 MR PRICHARD Yes  
 2 MR MAXWELL Yes.  
 3 THE COURT Has expressed some concerns  
 4 about missing work and the juror fee that's paid and  
 5 economic hardship that occasions it or is likely to  
 6 occasion his service on this jury  
 7 My thought is he had ample opportunity to  
 8 express his concerns during the voir dire, and that  
 9 unless he insists on an audience with me or if  
 10 you-all have an indication if he's inappropriate for  
 11 some other reason or problematic, bring it to my  
 12 attention But I felt compelled to bring it to your  
 13 attention  
 14 MR PRICHARD Your Honor, I would  
 15 certainly share your view on that, Your Honor, in  
 16 terms of the ample opportunity under the questioning  
 17 by both sides to come forward with any concerns they  
 18 might have about a two-week trial The dynamic  
 19 composition of the jury has been set certainly with  
 20 Mr Prisock as a part of that  
 21 I realize that an unhappy camper is  
 22 sometimes a devastating force on the jury I just  
 23 don't know what you can do at this point other than  
 24 to require him to remain on We would object to  
 25 removing him from the jury at this point without the

1 opportunity then to assess the remaining composition  
 2 of the jury as it is  
 3 This isn't the typical excuse that you get  
 4 when a juror falls ill and has some type of  
 5 emergency that requires the substitution of an  
 6 alternate juror He hasn't even heard the first  
 7 piece of evidence and he's already trying to leave  
 8 Had we known that, it very well may have affected  
 9 both sides in their approach to the composition of  
 10 the jury, the exercise of strikes, and so on  
 11 I'm very concerned that taints the  
 12 process, but it does -- the timing of it would  
 13 really cast serious doubt on the fairness that we  
 14 afford to the parties with this jury  
 15 I've never had this happen before. I've  
 16 had them get sick or the fourth day all of a sudden  
 17 the baby is ill or they've had a wreck. But I've  
 18 never had it where before the first piece of  
 19 evidence is heard after a day and half of voir dire  
 20 where a juror all of a sudden gets cold feet because  
 21 of his -- I'm not criticizing his concerns.  
 22 My position, Your Honor, would be that he  
 23 remain on the jury unless Your Honor decides  
 24 otherwise  
 25 MR MAXWELL Well, I'm likewise

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1 concerned. Frankly, I would like to see him  
2 replaced right now, but I recognize that perhaps  
3 that's premature. I suppose I would like to reserve  
4 my right to request that he be replaced with an  
5 alternate if there is any further indication from  
6 him of any sort of thing that might indicate, you  
7 know, a comment made to the bailiff or complaining  
8 to the bailiff that would indicate that he is just  
9 not going to be paying attention to the evidence or  
10 that he is somehow disgruntled and that could impact  
11 on his decision-making process

12 That's basically what I feel now. And we  
13 may have to explore this later. Inasmuch as we've  
14 got a jury with two alternates now, I suppose that  
15 certainly could finish today and -- I guess one  
16 thing I need to ask the Court is, will the bailiff  
17 be making any response to him or will he expect a  
18 response from Your Honor?

19 THE COURT I don't know how to answer  
20 that question. I probably need to talk with  
21 Mr. Forte, our bailiff, a little more to find out  
22 the extent of the concern that was expressed. I  
23 took it that it was a passing concern at this point  
24 and almost a gratuitous comment as opposed to a  
25 vigorous complaint. I'll inquire more about it and

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1 will likely do it in your presence so that you can  
2 be better informed about the extent of the problem

3 MR. PRICHARD Your Honor, and I would  
4 certainly request that any interview of the jurors  
5 sitting by Your Honor that both parties be there

6 MR. MAXWELL Certainly

7 MR. PRICHARD I didn't mean to suggest  
8 otherwise. We can go off the record for a second  
9 (Discussion off record)

10 THE COURT Part of the reason -- this  
11 needs to be on the record

12 If Mr. Forte has entertained a number of  
13 complaints and comments from jurors, it may be  
14 because my direction to them was that if they  
15 encountered violations of the rule that they bring  
16 it to the bailiff's attention. So I don't know that  
17 he has done anything extraordinary. And then we've  
18 had a number of people here for a number of hours,  
19 so I don't think that the comments he's received  
20 have been extraordinary. I guess they've been  
21 extraordinary in character in some ways.

22 But I will revisit with Mr. Priscock  
23 probably at the end of the day the question of the  
24 extent of the problem as relayed to me from  
25 Mr. Forte when you-all are present, and then we'll

1 make some decisions about whether we should inquire  
2 of him further

3 MR. MAXWELL Your Honor, just for the  
4 record, I want to make sure that I establish a clear  
5 record that we reserve our right to move to strike  
6 him subject to Your Honor's further investigation

7 THE COURT Okay

8 I'd like for you to take a moment before  
9 we bring the jury in to examine the courtroom with  
10 regard to suitability. I want to make sure all of  
11 the cords are out of the way, that everything is as  
12 convenient for you as necessary

13 MR. PRICHARD I appreciate that, Judge  
14 I think you've probably already done more to  
15 accommodate them than the law requires. I think  
16 that the squabbling that was going on, the  
17 negotiations, they should have done before they  
18 troubled this Court with that. But the first time,  
19 we'll kind of work our way through it, and I think  
20 you really did demonstrate remarkable forbearing  
21 with these folks

22 MR. PARRISH I've got a petty audiovisual  
23 problem. It would be helpful to us. We had our  
24 video set up and Woody had to borrow the cord to use  
25 it for his thing. So if between the two openings if

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1 we could have --

2 THE COURT A few minutes?

3 MR. PARRISH I don't know if it justifies  
4 excusing the jury, but just a few moments to make  
5 the audiovisual switch. It may be a break point. I  
6 don't know

7 THE COURT If you-all are talking about  
8 arguing for 45 minutes to an hour, I'd probably take  
9 a ten-minute break in between

10 MR. PARRISH That would be good. I hate  
11 to bother you with that kind of detail

12 (Hearing adjourned at 1:45 p.m.)

13 ---

14 THE BAILIFF All rise. This court is  
15 again in session. Be seated, please

16 THE COURT Let me see counsel at side bar  
17 for a moment, please.

18 (Side-bar conference held; jury not  
19 present)

20 THE COURT Mr. Prichard?

21 MR. PRICHARD Yes, Your Honor. I know  
22 you called us up here. We have a matter to take up  
23 before the jury is brought back in.

24 First of all, counsel and I have looked at  
25 the camera setup. Certainly just sitting there it

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1 looks to be okay. We haven't heard it operate yet  
 2 nor observed the cameraman So from the defendant's  
 3 standpoint, despite the fact that I'm concerned  
 4 about prejudice, I think his setup, given this  
 5 courtroom, appears to be unobtrusive at this point.  
 6 THE COURT It appears to be?  
 7 MR PRICHARD Unobtrusive at this point  
 8 -- as it can be  
 9 Secondly, Your Honor, we have a matter to  
 10 bring up that I think --  
 11 MR SHEFFLER Your Honor, I believe that  
 12 counsel for plaintiff intends to make reference and  
 13 use documents from the Brown & Williamson collection  
 14 that we've been arguing about last week We would  
 15 like to renew our objections to the use of such  
 16 documents and especially to the use of any such  
 17 documents that may be covered by attorney/client or  
 18 work product protection at this time  
 19 THE COURT All right  
 20 Do you want to be heard on that,  
 21 Mr Wilner?  
 22 MR WILNER Your Honor, we furnished the  
 23 four documents that we intended to mention to  
 24 counsel and showed him the excerpts that we intended  
 25 to read

1 everything okay?  
 2 MR WILNER Yes, sir.  
 3 MR SHEFFLER Okay.  
 4 MR PRICHARD This is something that  
 5 counsel and I have discussed, and I think we'll be  
 6 able to reach an accommodation after opening But  
 7 we have objected to Mr Acosta and I believe Ms. --  
 8 Is it Ginny?  
 9 MR MAXWELL Steiger  
 10 MR PRICHARD From sitting behind us on  
 11 our side of the table, not because -- it is a  
 12 crowded courtroom, but we can't observe them during  
 13 the course of deliberations But the jury can I'm  
 14 very concerned -- it also makes me a little uneasy  
 15 to have the opposition behind me  
 16 THE COURT Well, Mr Riley and  
 17 Mr Sheffler have your back, so to speak. They can  
 18 keep an eye on the expressions  
 19 MR PRICHARD I think it looks kind of  
 20 silly, Your Honor, to have one of our lawyers turn  
 21 around with their back to the jury, looking at two  
 22 people behind them  
 23 THE COURT Well, if he turns his chair to  
 24 the side, he will be able to keep an eye on them  
 25 I'll instruct them not to make any noticeable facial

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1 THE COURT Well, my instruction to the  
 2 jury that what the attorneys say is not evidence, I  
 3 think, will at least provide the protection that you  
 4 need, Mr Sheffler, for any objections that may be  
 5 made to the introduction of any evidence or  
 6 attempted introduction of evidence when it's  
 7 offered  
 8 So to the extent that you renewed your  
 9 motion, I am going to deny it at this time.  
 10 Is there anything else?  
 11 MR SHEFFLER One more thing, Your Honor,  
 12 just as a matter of housekeeping After the  
 13 plaintiffs' opening, could we take a brief break to  
 14 reassemble?  
 15 THE COURT Sure Yes  
 16 MR PRICHARD We discussed that  
 17 THE COURT Are you-all comfortable with  
 18 the audiovisual equipment? I mean, is everything  
 19 satisfactory, at least to the extent that it's not  
 20 going to be distracting, with the exception of what  
 21 you had mentioned about the camera rolling. I may  
 22 ask him to turn it on before the jury comes in, just  
 23 to see whether it sounds like a lawn mower or not.  
 24 MR PRICHARD Good idea.  
 25 THE COURT Other than that, though, is

1 expressions  
 2 MR SHEFFLER All right, I'd appreciate  
 3 that  
 4 MR PRICHARD Thank you very much, Your  
 5 Honor  
 6 (Side-bar conference concluded)  
 7 THE COURT Mr Kroll, I have some  
 8 concerns, as do the attorneys, about the noise of  
 9 your equipment. Is it operating now?  
 10 MR KROLL Yes, sir  
 11 THE COURT So that's the noise level we  
 12 should anticipate hearing during the course of the  
 13 trial?  
 14 MR KROLL Yes, sir  
 15 MR WILNER Sounds fine to me  
 16 MR PRICHARD I'm not sure, are those the  
 17 microphones up on the pedestal?  
 18 MR KROLL Yes  
 19 MR PRICHARD I think it's very critical,  
 20 Your Honor, that any side-bar situations can be  
 21 conducted outside of the hearing of the jury  
 22 MR KROLL I can remove it, Your Honor.  
 23 THE COURT Mr. Kroll has been given a  
 24 copy of the rules of judicial administration  
 25 MR PRICHARD He hasn't had a chance to

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1 read it

2 MR KROLL I haven't had a chance to read  
3 it

4 THE COURT Mr. Prichard raises a good  
5 point. Side-bar conferences, by rule, are private,  
6 that is, the media does not have access to them So  
7 to the extent that that microphone might pick up  
8 discussions that occur between the attorneys and  
9 myself at the bench, you need to see that it  
10 doesn't, which may mean disconnect it when that  
11 occurs, unless you --

12 MR KROLL It's not necessary, Your  
13 Honor

14 THE COURT Very good  
15 Anything else, Mr Prichard?

16 MR PRICHARD Not at this time, Your  
17 Honor

18 THE COURT Mr Wilner?

19 MR WILNER Nothing, Your Honor

20 MR KROLL Your Honor, one last thing I  
21 will be changing tapes about every 30 minutes I'm  
22 just going to let them roll through and I'll do it  
23 as quietly as possible, but there will be some noise  
24 involved with that

25 THE COURT All right

1 not overlap.

2 This is one of the fundamental principles  
3 of our system of justice. Before proceeding  
4 further, it will be helpful for you to understand  
5 how a trial is conducted

6 In a few moments the attorneys for the  
7 parties will have an opportunity to make opening  
8 statements in which they may explain to you the  
9 issues in the case and summarize the facts they  
10 expect the evidence will show

11 Following the opening statements,  
12 witnesses will be called to testify under oath.  
13 They will be examined and cross-examined by the  
14 attorneys Documents and other exhibits also may be  
15 received as evidence

16 After all the evidence has been received,  
17 the attorneys will have again an opportunity to  
18 address you and to make their final arguments

19 The statements that the attorneys now make  
20 and the arguments that they later make are not to be  
21 considered by you either as evidence in the case or  
22 as your instruction on the law Nevertheless, these  
23 statements and arguments are intended to help you  
24 properly understand the issues, the evidence and the  
25 applicable law So you should give them your close

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1 Mr Forte, bring the jury in, please  
2 (Jury present, 1 55 p m )

3 THE COURT Have a seat, please

4 Now, ladies and gentlemen of the jury, you  
5 need to know that everyone in this courtroom, with  
6 the exception of the Court, out of tradition and  
7 formality rises out of respect to you It's not  
8 necessary for you to remain standing once you enter  
9 the courtroom, even though everyone else might be  
10 So please feel free to come in when you're summoned  
11 and have a seat in your respective places

12 You have now been sworn as a jury to try  
13 this case This is a civil case involving a  
14 disputed claim or claims between the parties Those  
15 claims and other matters will be explained to you  
16 later. By your verdicts you will decide the  
17 disputed issues of fact. I will decide the issues  
18 and questions of law that arise during the trial  
19 And before you retire to deliberate at the close of  
20 trial, I will instruct you on the law that you are  
21 to follow and apply in reaching your verdicts.

22 In other words, it is your responsibility  
23 to determine the facts and to apply the law to those  
24 facts. Thus, the function of the jury and the  
25 function of the judge are well-defined, and they do

1 attention

2 Following the final arguments by the  
3 attorneys, I will instruct you on the law

4 You should give careful attention to the  
5 testimony and other evidence as it is received and  
6 presented for your consideration But you should  
7 not form or express any opinion about the case until  
8 you have received all the evidence, the arguments of  
9 the attorneys and the instructions on the law from  
10 me.

11 In other words, you should not form or  
12 express any opinion about the case until you are  
13 retired to the jury room to consider your verdicts  
14 after having heard all of these matters

15 The case must be tried or heard by you  
16 only on the evidence presented during the trial in  
17 your presence and in the presence of the attorneys  
18 and myself You must not conduct any investigation  
19 on your own. Accordingly, you must not visit any of  
20 the places described in the evidence or the scene of  
21 the occurrence that is the subject of the trial  
22 unless I direct you to view the scene

23 Also you must avoid reading newspaper  
24 headlines and articles relating to this case and  
25 trial You must also avoid seeing or hearing

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1 television and radio comments or accounts of this  
2 trial while it is in progress

3 The attorneys are trained in the rules of  
4 evidence and trial procedure and it is their duty to  
5 make all objections they feel are proper When a  
6 lawyer makes an objection, I will either overrule or  
7 sustain the objection If I overrule an objection  
8 to a question, the witness will answer the  
9 question When I sustain or uphold an objection,  
10 the witness cannot answer the question

11 If I sustain an objection, you must not  
12 speculate on what might have happened or what the  
13 witness might have said had I permitted the witness  
14 to answer You should not draw any inference from  
15 the question itself

16 During the trial, it may be necessary for  
17 me to confer with the attorneys out of your hearing,  
18 talking about matters of law and other matters that  
19 require consideration by me alone It is impossible  
20 for me to predict when such a conference may be  
21 required or how long it will last

22 When such conferences occur, they will be  
23 conducted so as to consume as little of your time as  
24 necessary for a fair and orderly trial of this  
25 case

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1 During the trial we will take recesses  
2 During the recesses, you shall not discuss the case  
3 among yourselves or with anyone else, nor permit  
4 anyone to say anything to you or in your presence  
5 about the case Further, you must not talk with the  
6 attorneys or witnesses or any parties about anything  
7 until your deliberations are finished In this way,  
8 any appearance of something improper can be  
9 avoided

10 If during a recess you see one of the  
11 attorneys and he or she does not speak to you or  
12 even seem to pay attention to you, please understand  
13 that the attorney is not being discourteous but is  
14 only avoiding the appearance of some improper  
15 contact with you

16 If anyone tries to say something to you or  
17 in your presence about this case, tell the person  
18 that you're on the jury trying this case and ask the  
19 person to stop If he or she keeps on, leave at  
20 once and immediately report this to the bailiff or  
21 court deputy, who will advise me.

22 At this time, the attorneys for the  
23 parties will have an opportunity to make their  
24 opening statements in which they may explain to you  
25 the issues in the case and give you a summary of the

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1 facts they expect the evidence will show.

2 Counsel for plaintiff?

3 MR WILNER May it please the Court.

4 THE COURT Yes, sir.

5 MR WILNER Good afternoon I'm Woody  
6 Wilner I haven't had the chance to speak to you  
7 before It's been a day and a half So I'll make  
8 up for that by speaking a lot No, I'm just  
9 kidding I will do my best to move it along, but  
10 I'm eager to talk with you

11 I only get this chance to address you  
12 directly, and then one chance at the end of the  
13 trial And so everything else in between will be  
14 witnesses who will ask questions under oath And it  
15 may be that some of that is hard to understand or  
16 you're wondering why they're saying certain things

17 This is a time in the beginning of the  
18 case and at the end of the case when we can try to  
19 say Well, this is why what is happening is  
20 happening This is what it's all for

21 So that's what I'm going to do for about  
22 an hour, is try to explain what we believe this is  
23 all for and why you're here

24 First let me say We thank you for being  
25 here, because it's a real You know, the word

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1 civic duty is used a lot Maybe it's overused But  
2 it's a pretty serious thing This is a great  
3 country to have this kind of system This is a  
4 really, really good system And we know that it  
5 takes your time And we know that there are times  
6 when you'd want to be elsewhere

7 But we can't do this, we can't run this  
8 country without your contributions So I want to  
9 thank you for being here for that And we take it  
10 very seriously All the attorneys and all the  
11 parties take your time very seriously We hope we  
12 will not waste it. We know it's valuable

13 And I have but a small amount of time to  
14 talk to you and really a lot to talk to you about

15 You have met the plaintiffs in this case,  
16 Grady Carter and Mildred Carter And although you  
17 haven't been able to talk to them, they will testify  
18 tomorrow

19 Mr. Carter, Mr. Grady Carter, is suffering  
20 from lung cancer. He's had surgery for lung cancer,  
21 and we're all hoping that it is successful

22 We will prove that the lung cancer came  
23 from the cigarette smoke from Lucky Strike  
24 cigarettes that he smoked from 1947, when he was 16  
25 years old, up until 1972 when he switched brands to



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1 some other brand, some filter brand, which is not an  
2 issue in this particular case at this time

3 The cigarettes that he smoked, Lucky  
4 Strike cigarettes, were made by the defendant, whom  
5 -- it's a little confusing, because now their name  
6 is Brown & Williamson They used to be called  
7 American Tobacco They've merged  
8 So legally they're Brown & Williamson, but  
9 you'll also hear American Tobacco. That was the old  
10 company that made the Lucky Strikes Today they're  
11 here as Brown & Williamson, because those two  
12 companies merged

13 Mr Carter is seeking money damages,  
14 damages from Brown & Williamson under the civil  
15 product liability laws, which we will do our best to  
16 explain it But His Honor, Judge Davis, will  
17 instruct you at the end of the case what the law  
18 is

19 I will make a humble attempt to explain  
20 just how -- the broad principles and how we are  
21 going to fit in But what I say about the law, His  
22 Honor, Judge Davis, is the authority on the law and  
23 he will instruct you on the law

24 We are charging that Brown & Williamson  
25 was negligent, which is a legal word But it means

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1 they didn't use reasonable care in their marketing  
2 of their product They didn't use reasonable care  
3 in getting the word out to people that they were  
4 dealing with a deadly product

5 They didn't use reasonable care to look at  
6 their product and evaluate it to see whether it was  
7 killing people and whether they could stop that or  
8 improve upon it And that is our charge And we  
9 intend to prove it

10 Now, before I go any further let me make a  
11 few remarks

12 Some people say that -- we mentioned it a  
13 little bit in the selection, which was, I think,  
14 always a painful process, but we appreciate you  
15 sitting through it.

16 This case is too big. You can't -- the  
17 issue of cigarette smoking is too big for a jury in  
18 Jacksonville, Florida, to consider. It requires the  
19 government. It requires the president. Who knows  
20 what?

21 Also, the issues of whether people go out  
22 of business. These issues were talked about.  
23 Somebody is going to go out of business or not.

24 Well, let me say first that we are not the  
25 legislature. We are not going to ban smoking.

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1 Maybe we should, maybe we shouldn't It has nothing  
2 do with our job Our job is a very limited one  
3 And I'll explain what my view of our job is

4 But our job is not banning smoking Our  
5 job is not telling a particular company that it can  
6 continue to do business or not However you feel  
7 about that That isn't what's going to happen  
8 here

9 We all have roles to play And our role  
10 is defined It's a defined role It's limited  
11 It's just We're just cogs We want to be good  
12 cogs So how do we do it? And I'll get to that in  
13 a minute

14 Other people say Well, look, some people  
15 say the case is too big Others say Well, the  
16 case is too little I mean, it's so little how can  
17 solving one problem between Grady Carter and Brown &  
18 Williamson possibly amount to anything? How can we,  
19 a small and limited set of human beings here today  
20 do anything?

21 The government, as I said, should get  
22 involved, some say Well, let me also offer this

23 The government is involved Whether you  
24 think the government should do more or less in life,  
25 whether you believe in government or you don't,

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1 whether you think there's too many laws or there  
2 aren't enough, it doesn't matter That's not what's  
3 on trial here

4 Actually, the government in its wisdom --  
5 and it may not have a lot, but maybe it has some --  
6 set up this system for us to be here It's actually  
7 the state government, the government of Florida  
8 And it said -- the government said that we can come  
9 here and solve problems using what's called the  
10 civil product liability laws

11 Well, let me explain Because when people  
12 hear "laws," they think laws mean if you break the  
13 law you go to jail And a lot of times when we talk  
14 about cigarettes, we hear Well, they're legal so  
15 how can you bring an action for a legal product?  
16 Well, there are two kinds of law the criminal law  
17 and the civil law

18 The criminal law tells you what products,  
19 for instance, you could sell. If you break it, you  
20 go to jail. The civil law doesn't say you can't  
21 sell the product. It says if you sell the product,  
22 you have to obey the civil law

23 What does that say, Mr. Wilner? It says  
24 you have to give an adequate warning if the product  
25 is hazardous You have to keep up with the research

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1 on the product so you know whether it's hazardous.  
 2 You have to inform your customers about the hazards  
 3 that you knew or should know. And you have to work  
 4 on that product and get it better if it's got a  
 5 hazard. Or if it's so terrible that you can't fix  
 6 it, then you really have to think twice about  
 7 selling that particular product

8 Now, those are all requirements that the  
 9 state through the civil law puts on anybody in this  
 10 great country who decides to sell a legal product  
 11 That's the quid pro quo You sell it, you make the  
 12 money, but you've got to remember that the civil  
 13 laws -- even if you get the right to sell it I  
 14 mean, if it was an illegal product, we wouldn't be  
 15 here Nobody could buy it. But a legal product,  
 16 you've got to comply with the civil law

17 So then you say, Well, Mr Wilner, does  
 18 that mean a policeman can come into your company and  
 19 say you're violating the civil liability, the civil  
 20 law? No This is where we determine whether the  
 21 civil law was violated Mr Carter is a private  
 22 citizen enforcing the civil law This is the proper  
 23 way to do it If it weren't the proper way, we  
 24 wouldn't be here This is the proper way to make a  
 25 manufacturer of a product responsible under the

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1 civil law

2 We don't have to wait for the president  
 3 We don't have to wait for the government They have  
 4 their own agendas and maybe their problems are  
 5 bigger than what we can solve But the law is set  
 6 up to allow private citizens and individual juries  
 7 to solve the civil laws and make a determination  
 8 whether a manufacturer was in violation

9 So you say, Well, Mr Wilner, I don't know  
 10 if that's fair I mean, what you're charging  
 11 happened a long time ago It happened back in the  
 12 '40s and the '50s and the '60s and into the '70s  
 13 Is it fair for us to come back now? And the answer  
 14 is yes, because some diseases take 40 years to  
 15 develop It should be the concern for being called  
 16 on the carpet 40 years later that keeps people from  
 17 selling products that kill people, at least products  
 18 that they should be able to fix

19 So the civil law is designed to give this  
 20 concern to manufacturers so that they know that if  
 21 they violate it -- nothing may happen for quite a  
 22 long time until the seeds of destruction are sewn,  
 23 until in some long-term diseases like cancer some  
 24 poor person like Mr Carter having used the product  
 25 as directed and honestly and having bought the

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1 product after it was sold and having paid fair value  
 2 for it later on down the line says, wait a minute,  
 3 I've got a problem And it's perfectly reasonable  
 4 and correct that we do that So that's the law

5 Now -- that's not the whole law, but  
 6 that's the law of product liability that we base the  
 7 reason why we're here

8 Now, there are a couple of things also  
 9 that I want to handle preliminarily before we get  
 10 into the meat and potatoes of why or how we prove  
 11 our case that the Lucky Strike cigarettes caused  
 12 Mr Carter's cancer and that Brown & Williamson was  
 13 negligent and what to do about it

14 We have heard the term in jury selection  
 15 of responsibility, personal responsibility, people  
 16 make choices and things like that First let me  
 17 point out There is no claim by anyone that  
 18 Mr Carter did anything wrong by doing what he did  
 19 No one is claiming that Mr Carter didn't act  
 20 reasonably in buying cigarettes, in smoking them, in  
 21 smoking them all the way down to the butt or maybe  
 22 just a part of them No one is saying that he  
 23 smoked too many No one is saying that No one is  
 24 claiming that Mr Carter did anything wrong at all

25 There is no claim in this case for

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1 assumption of risk That is not a legal claim and  
 2 you will not see it on the verdict form

3 Do you remember what I was saying, is  
 4 we're cogs Well, these are interesting questions  
 5 about responsibility In fact, Mr Carter  
 6 acknowledges responsibility Of course, he bought  
 7 the product If he didn't buy the -- products have  
 8 to be bought All legal products have to be bought  
 9 or else they're not sold and the civil law of  
 10 products liability would never even apply. That  
 11 doesn't really have much to do with it

12 It's an interesting philosophical issue  
 13 I mean, I suppose if you were to bring an action  
 14 against the Ford Motor Company because the brakes  
 15 went out in your car, they could come to you and  
 16 they could say, Well, why did you buy my Ford? I  
 17 mean, you should have known Ford brakes were bad

18 Well, I'm a little facetious. But that  
 19 same principle -- that's not in the testimony. That  
 20 doesn't suggest anything

21 The way to solve these problems about --  
 22 isn't it true that consumers have to buy the product  
 23 before they can get hurt by the product, and the  
 24 answer is yes, I suggest that we direct ourselves to  
 25 the particular task that will be charged to you. I

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1 I think that there will be these interesting  
2 philosophical questions come up, but the real task  
3 is to answer questions on the verdict form that  
4 define what the job of this court, you, the jury,  
5 His Honor, the judge, and us, why we're here in the  
6 first place

7 So I suggest -- and we will know when His  
8 Honor, Judge Davis, delivers the verdict But these  
9 will be, I foresee, the issues that you will be  
10 asked to determine One is, was Brown & Williamson  
11 negligent, as we will talk about that? Two is, did  
12 Brown & Williamson market a defective product?  
13 Three is, were either or both of those a cause of  
14 the plaintiff's injuries? Fourth, did Mr Carter  
15 file his case on time? We'll talk about that at the  
16 end And fifth, if you answer yes to any of the  
17 first three, what are Mr Carter's damages?

18 And I suggest to you that there will be no  
19 question of did Mr Carter assume the risk or not  
20 There will be no question that says was Mr Carter  
21 himself negligent, although you might speculate that  
22 may or not be so We're here to solve these five  
23 questions or however many actually appear on the  
24 verdict form, and that's why it's important to focus  
25 on what these questions mean So I'm going to

1 necessarily the only cause Mr. Carter realizes  
2 that by being a link on the chain, without him there  
3 would be -- he wouldn't have gotten cancer if he  
4 hadn't smoked We all know that He is a cause  
5 He acknowledges that His cigarette smoking also  
6 from 1972 when he switched to the filter brands up  
7 until 1990 when he got diagnosed, that was a cause  
8 also There is no question about that We accept  
9 that

10 The question is here, the smoke that he  
11 did from when he was a child, the 25 years of  
12 unfiltered Lucky Strike, Brown & Williamson has  
13 denied that that's any cause And we are here today  
14 to prove that it is a contributing cause Maybe all  
15 of the cause, maybe only part of the cause But we  
16 acknowledge We will make no bones about that,  
17 Mr Carter is a cause of his own disease He is  
18 He acknowledges that And anything he smoked after  
19 1972 and before, they both contributed

20 And you'll hear testimony about how cancer  
21 is caused Cancer starts with a damage to a cell  
22 that nobody can see It's a damage to the inside of  
23 the cell, inside where the DNA lives And that cell,  
24 that damage can sit there for years They call it  
25 the latency period It could be 40 years In this

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1 discuss those in the next few minutes that we have,  
2 because they're very interesting questions

3 Now, there is one I want to just mention,  
4 a few things, and get off the top of my head and  
5 that's -- next, please Do you remember question  
6 three said "cause"?

7 MR SHEFFLER Your Honor, I hate to  
8 object at this point in time, but I think this is  
9 argument of legal issues that the Court will  
10 instruct at the end of the case in closing argument,  
11 and in an opening statement you talk about what the  
12 evidence is and what the evidence will be

13 THE COURT Overruled.

14 MR SHEFFLER Thank you

15 MR. WILNER One of the issues that you'll  
16 be asked to decide is did, anything that Brown &  
17 Williamson did cause anything that happened to  
18 Mr Carter. Well, in one sense we suggest that's  
19 fairly obvious if in fact their cigarette caused his  
20 lung cancer And doctors say that and everybody  
21 says that. It would seem to me to be fairly  
22 obvious.

23 But I want to make sure that the meaning  
24 and what we contend about cause is fully  
25 understood. No one suggests that a cause is

1 case it's over 40 years And it goes along and it  
2 goes along, and some other thing happens Who knows  
3 what And then that cell begins to divide, and it  
4 starts to divide and it starts to divide And you  
5 know it's another five to 15 years before that one  
6 cell turns into something you can diagnose

7 So you start backing up in time and you  
8 say, well, when did the damage occur? Well, you'll  
9 hear lots of technical testimony about that But  
10 there is no suggestion -- I think there will be no  
11 serious suggestion that the 25 years of unfiltered  
12 Lucky Strike initiated his cell -- his cells to form  
13 this disease that was manifest in 1990 And if it  
14 was contributed to by later events, well, sure, we  
15 don't dispute that Of course That's a different  
16 issue Interesting

17 Next, please All right, shift gears a  
18 little bit I hope you-all say no, but this is an  
19 old advertisement for Lucky Strike cigarettes which  
20 is going to set the theme for what I'm going to tell  
21 you in a little bit. And what happened to my  
22 thing? There it is. Can you see it? Oh, it's just  
23 really dum. It's like follow the bouncing ball.

24 This is a ad that says -- you know, this  
25 is fascinating It looks old It says, "Do you

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1 inhale?" And it's advertising Lucky Strike. And it  
2 says, "Let others explain their striking avoidance  
3 to the subject. Lucky Strike makes its position  
4 crystal clear. Inhaling is most important to every  
5 smoker."

6 Well, you know, when I first saw this I  
7 said, What, are they crazy? Well, what difference  
8 does it make? Everybody knows you inhale  
9 cigarettes. Today this is so out-of-date it doesn't  
10 make sense. But you know what? There is a real  
11 tragedy that went on, and we'll put on evidence  
12 about why this -- not just -- I won't say it's only  
13 Lucky Strikes, of course. This was just a symbol of  
14 the time.

15 The cigarette product as typified by the  
16 Lucky Strike and the inhalation, which is different  
17 from pipes and cigars, together caused the biggest  
18 epidemic of lung cancer and disease in the 20th  
19 century. All this business started with inhaling  
20 and started with cigarette sales going up.

21 Next, please. Everyone thinks cigarettes  
22 have been around forever. In fact, that's not  
23 true. Skip that one for now.

24 Cigarettes, in fact, are a relatively  
25 recent product. They are -- if you see, this is the

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1 curve of cigarette sales versus time. Here in 1970  
2 or '60 they peak. Now, this isn't total sales.  
3 This is per person, and it's averaged over the  
4 number of people. So it's the amount they're  
5 selling per person.

6 Look at that. You know, in the '20s there  
7 were hardly any cigarettes sold. And as it got into  
8 the '40s, look at the giant leap here after World  
9 War II, right around there, '45. Wow! Straight  
10 up. And then leveled off and then jumped again and  
11 peaked and now it's on its way back down. That's  
12 per capita. You know, it's a reflection of how many  
13 people are smoking versus the entire population.  
14 But it's not just that there are more people,  
15 because that wouldn't do it. There's more people  
16 smoking and now there's less.

17 So the cigarette is a pretty new product.  
18 It's a 20th century product, and there's something  
19 about inhaling a cigarette that's different. It's  
20 not the same as a pipe; it's not the same as a  
21 cigar. What do you care? Well, it's a big  
22 difference.

23 Next, please. I'm going to now show you  
24 something that has not really been publicized much,  
25 and I hope when you see it you never forget it.

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1 This evidence and other medical evidence will be  
2 discussed by the doctors that testify. Dr. Bruce  
3 Yergin will testify from Memorial Hospital here  
4 Dr. Alan Feingold, who is a specialist in these  
5 issues and in the diseases caused by cigarette  
6 smoking, he will testify probably Thursday.

7 This information is available, but it is  
8 not publicized very much. And it is something I  
9 suggest to you as you look at it more will just  
10 floor you. Because if you see the different types  
11 of cancer are plotted in terms of how many  
12 occurrences -- and this is not the number in the  
13 country. This is per 100,000, so it's a rate. It's  
14 the same scale as the cigarette chart. And most of  
15 these cancers are not going up.

16 I mean, you hear a lot about cancer in the  
17 air and cancer in the water and all of that stuff.  
18 But none of these cancers of the colon, the  
19 prostate, the pancreas, the liver, all of these are  
20 pretty much not going up very much in the general  
21 population. But I don't have to tell you about  
22 that.

23 What in the world could be doing that?  
24 Well, that is something that I am going to prove to  
25 you people began in the 1930's. See how it started

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1 up? Right when it crossed the liver there back in  
2 the mid-'30s the scientists became very concerned,  
3 because that's what's called the secular trend. It  
4 means it doesn't seem to be cyclic. It's not going  
5 back and forth. It's just going up. It's like  
6 what's happening, you know? There is something  
7 happening. Something is changing. People haven't  
8 changed.

9 You know, you can't look at Grady Carter  
10 and say that he -- this is death rates and  
11 Mr. Carter is still with us. He wasn't far from  
12 joining this curve somewhere. But is Grady Carter  
13 any different from the people who lived back here?

14 We will suggest to you that the reason  
15 this looks like this is the introduction into the  
16 market of a particular product when inhaled as  
17 expected that caused a terrific and unexplainable  
18 otherwise and tragic rise in cancer of one kind,  
19 predominantly. There were other kinds that were  
20 also involved. But this is the key killer, which  
21 has made lung cancer the number one killer among men  
22 and cancer and the now passed breast cancer as the  
23 number one killer in women, too. And it's all  
24 because of that little cigarette that was introduced  
25 in the '30s that said go ahead and inhale it.

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1 Why do I care about inhaling? Well,  
2 actually the statistics -- and we don't have time to  
3 show them all to you, but the pipe and cigar smokers  
4 don't have this problem Tobacco has been used for  
5 years And it really isn't a matter of whether you  
6 like tobacco or not Because tobacco when it was  
7 used years ago and people just -- you know, they  
8 smoked a little after dinner and maybe the men got  
9 together and they put on their smoking jackets and  
10 they went into the smoking room and they had some  
11 cigars That didn't cause that  
12 And this idea that, well, everybody knows  
13 that tobacco has been dangerous for years Well,  
14 that's more of a moral thing I mean, some people  
15 just don't like it on moral grounds But who  
16 cares? We're not here to give moral business  
17 We're here to say that that indicates a defective  
18 product was introduced into the American economy  
19 around 1930, and that that is a very serious problem  
20 which bears our attention  
21 And we will prove to you not only that  
22 that is the signature of the cigarette both on a  
23 large scale and a microscopic scale, but that the  
24 defendant, Brown & Williamson, was aware of what was  
25 happening and decided that really it had to stay in

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1 the business, basically come what may And that's  
2 our negligence claim and our defect claim, because  
3 we feel that the cigarette was designed in such a  
4 way that it caused that problem and that didn't have  
5 to happen either  
6 I'll tell you what we'll -- as this trial  
7 goes on and we have more time we'll see how the  
8 prospect of cigarettes which would not cause these  
9 problems was discussed, tested People thought  
10 about it and in large measure decided that it would  
11 be bad for business to bring them out. So they  
12 continued selling the unfiltered product, which is  
13 probably the worst of all, up through at least 1972  
14 where we're concerned and even today without  
15 suggesting for a minute that really that's what  
16 we're dealing with  
17 Next, please So you say, Well,  
18 Mr Wilner, that sounds like a big problem and I  
19 thought you said we wouldn't be handling too big a  
20 problem. Okay I promise that we will not have to  
21 handle the biggest problems in the world, just our  
22 little -- we'll just be good cogs and see if the  
23 problem can be solved. Okay.  
24 Remember when I said in the 1930's the  
25 doctors started to get together and they decided

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1 something was amiss, you know, something was rotten  
2 in Denmark and lung cancers were going up and they  
3 didn't know why? Well, you will hear tomorrow or  
4 Thursday a detailed discussion of all of the -- not  
5 all, but there is never any all, but many, many of  
6 the important medical articles or literature that  
7 came out in the '30s and the '40 discussing this  
8 terrible problem  
9 Now, when I say medical literature, it  
10 sounds good but I think maybe who knows what that  
11 is Well, let me explain Medical literature is --  
12 you know, when doctors and researchers working in  
13 labs and also doctors treating patients, when they  
14 see something funny, they -- it's a great  
15 tradition They look at it and they talk to their  
16 colleagues and they say, you know, we saw four lung  
17 cancers today We haven't seen those in years  
18 What's going on?  
19 Dr Jones, did you see a lot of lung  
20 cancers, too? Yes, I've seen a lot lately Well, I  
21 wonder what's happening? Well, did you talk to your  
22 patients? Yes, I talked to them Well, did  
23 anything come out of that or is anything common? I  
24 mean, did they all work on a farm or what?  
25 This is the way that things begin So

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1 doctors begin to talk and then they get together  
2 And eventually two of them get together and say, you  
3 know, we talked to doctors all over the city and  
4 every gol-dang one of these lung cancers is a heavy  
5 cigarette smoker Hummm? And they all say, hummm?  
6 Isn't that something? We'd better write this up  
7 because other doctors better know about this So  
8 the first couple of things come out  
9 And actually the first couple of things  
10 came out in England, 1927, by a doctor called  
11 Talcoat, and he observed that almost all of his lung  
12 cancer patients were smokers He said they did  
13 Well, that's enough to get the ball rolling when you  
14 consider that lung cancer was considered completely  
15 incurable At that time it was 100 percent fatal  
16 It was not a disease that anybody would take chances  
17 with It was a hundred percent fatal  
18 It wasn't until the '30s when they began  
19 to perfect -- not perfect -- they began to  
20 experiment with lung removal, complete lung removal,  
21 and the patients survived I mean, for a while they  
22 didn't survive -- that they even could talk about  
23 lung cancer cure. And, you know, it's one of the  
24 big disappointments in medicine that it hasn't  
25 helped much. Lung cancer cure still runs between

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1 five percent and 15 percent for five years'  
2 survival, depending on the kind of cancer you have  
3 So it's terrible.

4 Why is it so bad? The lungs don't have  
5 pain cells. They don't have pain nerves They  
6 don't have receptors So when you start getting a  
7 mass in there you don't actually feel it It  
8 grows It's not like your brain If it grows in  
9 your brain, you get headaches and seizures because  
10 there is no room for it But in a lung there's lots  
11 of room for it, so it grows It grows for years

12 You go in for a chest x-ray, they say, oh,  
13 my God -- or something happens The tumor as it  
14 grows blocks its own blood supply The tissue  
15 dies It starts to bleed You cough up blood  
16 You're scared to death You go in Oh, my God,  
17 it's bad Maybe we can help you, maybe we can't

18 Lung cancer is a terrible cancer It has  
19 one of the worst survival of any of the cancers,  
20 right up there with brain and pancreas You just  
21 can't cure it Hopefully Mr Carter has survived  
22 He's survived five years and we're all hopeful  
23 That's all we can say

24 All right I've got to move on So in  
25 1927 the British doctor says, All of my lung cancer

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1 patients are smokers Uh-huh I wonder why that  
2 is? Drawing the stuff in your lung, you know Two  
3 and two

4 Okay Another doctor in 1936 says 90  
5 percent of our patients are chronic smokers We  
6 believe that inhalation of tobacco smoke may be an  
7 important factor in producing chronic irritation  
8 That is Arkin and Wagoner, 1936, Journal of the  
9 American Medical Association Pretty good

10 Now, what is a manufacturer of cigarettes  
11 to do? A, you read the literature You've got to  
12 You're an expert. That's part of your job B, you  
13 start looking at this and you say, Oh, my God  
14 Could that be us? Could that be us? Is this a  
15 deadly product? And, C, you immediately act to  
16 confirm it, deny it, by research, not by blabbing  
17 your -- you know, flapping your jaws. Not by public  
18 relations, but by research. And you figure out  
19 what's going on and you solve the problem because  
20 you've got to -- your number one responsibility is  
21 to your consumer

22 You put your profits -- if you put your  
23 profits and your sales ahead of your consumer,  
24 you're tripping the product liability law right  
25 there And you as a manufacturer are taking your

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1 chances If you decide business as usual, hope for  
2 the best, then you enter into a bargain with the  
3 devil. You're going to hope that nobody is going to  
4 get sick and come back.

5 And we'll show that that's the bargain  
6 They said, Well, we're going to -- business as  
7 usual We're not going to admit it. We're going to  
8 keep our -- we're just going to keep denying it and  
9 keep selling cigarettes and hope that this day  
10 doesn't come that somebody comes in here and says  
11 you violated the products liability law and you  
12 killed me or you hurt me

13 All right Got to move I'm up to this  
14 This is 1941. It's a fascinating article I wish I  
15 could tell you all about it These people who wrote  
16 it were the greatest doctors of the day It was  
17 Alton Ochsner and Michael DeBakey They were  
18 renowned surgeons that were -- we have it as  
19 evidence It has 400 citations in five different  
20 languages, all the known causes of cancer of the  
21 lung

22 They discussed the theories Could it  
23 have come from the roads? You know, people were  
24 putting roads down back then Could it have come  
25 from the air? Could it have come from the cars?

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1 And they discussed all of that, and they say No  
2 way, because the people living in the cities and the  
3 people living in the towns are getting it about the  
4 same, and so forth and so on

5 And they go through very detailed  
6 reasoning, and they come out and they say -- next  
7 please -- it's our definite conviction that increase  
8 in the incidence of pulmonary carcinoma, which is  
9 lung cancer, is due largely to the increase in  
10 smoking, particularly cigarette smoking And the  
11 end of the quote was, which is universally  
12 accompanied by the practice of inhaling So they  
13 knew 1941 So where was American Tobacco Company  
14 in 1941? When this happened what did they do? The  
15 answer is silence

16 And I'll fast-forward you because I'll  
17 never get to it at this rate But everybody is  
18 sitting and thinking, Well, there has been a warning  
19 on cigarette products I mean, you know,  
20 Mr Wilner, what about that? So the fast-forward is  
21 because -- I hope to get to it in time, but I'll  
22 probably run out -- nothing, no warnings, no  
23 cautions, no nothing on the product where people  
24 have a right to see them, where people who buy have  
25 a right to see that the manufacturer warns them, not

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1 that they hear it somewhere else in the radio or  
2 wherever. They have a right, because they may not  
3 believe what the government says or what somebody on  
4 a television program says They have a right  
5 That's the law, they have a right to see it

6 In 1966 -- and we'll spend another five  
7 minutes showing you all that happened between '41  
8 and '66 You can imagine the kind of research that  
9 went on Not a word In '66 they're made to put a  
10 warning on by Congress, and the warning says,  
11 Caution May be hazardous Which was one of the  
12 biggest understatements in the world at that time

13 In 19-- -- anyway, I'm just giving you  
14 fast-forward I'm not going to go into detail But  
15 that precautionary label stayed on until 1970 when a  
16 slightly different one went on that said The  
17 surgeon general says smoking is hazardous It  
18 didn't say anything about cancer

19 When was the first time cancer was  
20 mentioned? '84 '41 to '84 Cancer is now one of  
21 the four rotating warnings that were required by the  
22 federal government in 1984 And that's fine I  
23 mean, we're not talking about 1984 We're not  
24 talking about the federal government

25 '41 Duty? We will present evidence

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1 they had a duty then to take this matter very  
2 seriously A life and death matter And they did  
3 nothing. Nothing constructive Everything  
4 destructive by trying to tell -- trying to get  
5 people off the track Keep advertising Keep  
6 suggesting it's okay

7 Next I'm not saying it's wrong to  
8 advertise I'm saying it's wrong to advertise  
9 carelessly and suggest that the product is harmless  
10 when you advertise We'll get to that in a minute

11 All right, 1950, Journal of the American  
12 Medical Association, tobacco smoking as a possible  
13 etiologic -- that means cause -- factor in  
14 bronchiogenic carcinoma You'll hear all about  
15 this This is the famous Wynder/Graham paper  
16 Wynder and Graham were crusaders, pioneers in this  
17 field.

18 They studied 605 lung cancer cases.  
19 Fifty-one percent of the lung cancers and 19 percent  
20 of the controls smoked over a pack a day, and they  
21 said that definitely is not average That isn't  
22 random. We're getting a signal here. This is a  
23 very important problem And this was after the  
24 war. This was an application of the technique of  
25 epidemiology, which is a modern and an accepted

1 practice for determining whether certain things are  
2 impacting people, whether they are causing disease  
3 There has been much research done in the  
4 field of epidemiology Epidemiology, the word comes  
5 from the word epidemic It started a long time ago  
6 when they were trying to figure out what caused the  
7 epidemics You'll hear all about the Wynder/Graham  
8 paper and the six or seven that I have skipped  
9 over

10 Next, please Also on the same year --  
11 oh, this is from Wynder/Graham This is an  
12 interesting concept The less a person smokes are  
13 the less his chances -- it's spelled wrong -- of  
14 cancer of the lung develop and, conversely, the more  
15 heavily a person smokes the greater are his chances  
16 of becoming affected with this disease It sounds  
17 so simple

18 I mean, why am I saying this? That's the  
19 concept of dose/response It means, you do  
20 something more -- the more people smoke, the more  
21 they have got cancer And they were very interested  
22 in that because that means there must be something  
23 going on You see, if it were just some bolt from  
24 the blue where just certain people got cancer and  
25 certain others, you could always argue, Well, I

1 don't know Maybe it just -- you know, just  
2 happened But to see that as you went along the  
3 more people smoked the more they got it, there was  
4 something going on inside

5 Dose/response was one of the most  
6 important things to be discovered And every study  
7 that has looked at cigarette smoking -- there are  
8 thousands I couldn't even begin to list them  
9 Everyone that has ever tested it has found dose/  
10 response in spades It's just like saying, is the  
11 sky blue now? I mean, yes How blue is it? It's  
12 real blue, real, real blue Now, does everyone  
13 agree? No Brown & Williamson evidently doesn't  
14 The sky is not blue for them So I am up here until  
15 I'm blue in the face trying to say, Yes, the sky is  
16 blue and this is the real world

17 Okay, Next This is Dr Evarts Graham in  
18 the famous mouse painting experiment in 1953 I  
19 apologize to the people who, myself included, who do  
20 not approve of -- or don't look happily on using  
21 animals to do research. But sometimes it has to be  
22 done so that's fine

23 And next, please. This is what happened  
24 to the poor little dears Cancer on the back This  
25 was an absolute demonstration This was from

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1 cigarette tar, 1953 So this was something that  
2 people really said, well, now here, not only do we  
3 have this irrefutable epidemiologic proof, but now  
4 we've got proof that the agent in the tobacco is  
5 actually causing cancer

6 So immediately the cigarette industry,  
7 Brown & Williamson included, said -- after the  
8 epidemiology came out, they said it doesn't prove  
9 anything because you haven't shown it in the  
10 laboratory and you haven't proven it on animals  
11 This came out and they said mice aren't men Okay  
12 Well, you can't do it on men because it's  
13 unethical

14 And as a matter of fact, the cigarette  
15 industry, Brown & Williamson included, used the same  
16 way -- they called it an assay test -- the same test  
17 on mice for years secretly They used this to  
18 determine whether their products -- how bad their  
19 products were So after publicly denying that it  
20 was -- it didn't prove anything, they went back in  
21 their laboratory and started doing it

22 Okay, next What happened in 19- -- what  
23 happened after the mouse painting experiment? Well,  
24 Brown & Williamson, American Tobacco and the rest of  
25 the industry had a problem They had a problem that

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1 it had now been proven that cigarette smoking caused  
2 cancer to any doctor just about who would listen  
3 It had been proven clinically by doctors who looked  
4 at their patients and asked them It had been  
5 proven epidemiologically by the accepted techniques  
6 of the day almost without refutation There were  
7 always a few who didn't agree, but the mainstream  
8 had definitely concluded it And this is a serious  
9 problem

10 I mean, if we knew here that apples may  
11 cause -- that there is a scare that an apple you eat  
12 may cause cancer, Oh, my God, they take them off the  
13 shelf It's not a matter of every last person  
14 finally lining up and saying Yes, you know, I now  
15 accept it I mean, if it's a genuine scare, you do  
16 something about it

17 Why was it that not much was done about  
18 cigarettes? Some people feel because it's not a  
19 food. It's not in the Food and Drug Act. Well, you  
20 know, actually inhalation is a more intimate form of  
21 contact with something than eating it. When you eat  
22 something, it goes through you, so to speak. But  
23 when you inhale it, it doesn't.

24 Your lungs do not have any of the mucosa,  
25 that area in your gut or the lining in your gut

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1 that's so powerful and can keep out things that  
2 aren't good for you. Your lungs are very delicate  
3 And inhaling things is very, very -- it's an  
4 immediate contact.

5 And do you remember back about  
6 inhalation? Why do you think cigarettes sold so  
7 well? When you inhale the nicotine, nicotine goes  
8 to your brain in like three seconds Your lung is  
9 as big as a tennis court in area And so when that  
10 smoke impacts your lung, it goes right in and you  
11 get that

12 Nicotine is a drug We'll prove that in a  
13 minute But you don't get that buzz without  
14 inhaling and that's why they started selling so many  
15 cigarettes Because it felt good to do that It  
16 tricks your brain Your brain thinks, Great, give  
17 me another one That's the way your brain works

18 There is going to be a lot of talk about  
19 people smoke because they like to Well, of course,  
20 they like to Their brain says Give me more  
21 That's the way it works There are receptors up in  
22 your brain They're special things that attach to  
23 certain molecules that come into the smoke

24 And, in fact, it's shown, and some of it  
25 was shown in secret research by the cigarette

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1 companies, Brown & Williamson included, that proved  
2 that your brain changed when you smoked and that  
3 these receptors changed and that afterwards you  
4 were -- maybe for your whole life left with this  
5 craving So maybe you'd say, Well, I can get over  
6 the craving Okay Maybe you can, and maybe you  
7 can't, and maybe you'd go through agony to get over  
8 it

9 Now, one of our claims is addiction You  
10 know, people say addiction is you could quit or you  
11 couldn't quit. Huh-uh Addiction is agony  
12 Addiction is craving that you can't fulfill, an itch  
13 you can't scratch. Addiction is -- does it mean  
14 what's humanly possible? I don't know? Could I run  
15 a four-minute mile? I don't think so But could I  
16 if I trained? Maybe I don't know I mean,  
17 human -- no one knows where the limits of human  
18 accomplishment are, but we know where agony is We  
19 know what it takes and that it affects every person  
20 slightly different.

21 And the research that has come out -- and  
22 I'll share it with you to the extent I can -- shows  
23 that as the brain changes in response to nicotine  
24 that it gets in it, something that -- the change is  
25 that it always wants more. And that lifelong



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1 smokers when they're off are never the same.  
2 Grady Carter went through hypnosis. He  
3 went through counseling. He went through agony to  
4 get off, to get off the drug And he finally got  
5 off, all right, when -- you know, right around the  
6 time he was getting cancer and he coughed up blood  
7 he got the shock of his life And, yes, you bet,  
8 shock cures smoking Sure it does It doesn't  
9 leave you without agony, and he's still in it He's  
10 still got his prescription for nicotine gum.

11 Now, I mean what kind of a product does  
12 that to a normal human being? What kind of a  
13 product reduces a normal human to this craved, you  
14 know -- I mean, he's not a -- you can make up your  
15 mind about Grady Carter whether you think he's a  
16 good person or not, but he is certainly a normal  
17 human being here I mean, you're not talking about  
18 somebody crawling around on the street for another  
19 fix

20 But what kind of a product in this society  
21 can do that to people, can make it so that they  
22 blame themselves that they can't quit? I mean, the  
23 whole world is like that And, you know, when you  
24 looked at that rise in lung cancer, all those people  
25 are to blame because they can't quit? It's weird

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1 It doesn't make sense It must be something else  
2 It must be if you stand back and look at it, you've  
3 got the wrong chemicals coming in affecting the  
4 brain and they're doing it more now because of the  
5 inhalation because of the epidemic in this century  
6 It's really quite a story

7 Next -- oh, I didn't do that Oh, yes  
8 Okay So what did the cigarette companies  
9 do? What did Brown & Williamson do? It was 1953  
10 They had these problems Did they say? Okay,  
11 problem, let's solve it? First, tell our customers,  
12 bad news here Addiction Cancer Maybe other  
13 diseases Did they say, Okay, we're really going to  
14 find out? Did they say, We may not be able to keep  
15 selling this? We're going to have to change our  
16 product. We're going to have to turn it into  
17 something you can't inhale We're going to go back  
18 to the way it was in the '20s when you could enjoy  
19 tobacco if you wanted without dying

20 Unfortunately, you'll see in a long,  
21 long -- I hope not too long -- series of documents  
22 that we're going to show you that the cigarette  
23 industry didn't do that at all. Having the  
24 opportunity, having the opportunity to make good, to  
25 do right, to care for their customers. Instead they

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1 try to buy their way out by things like this. This  
2 will be in evidence.

3 And, you know, it's a lot of self-serving  
4 stuff. They say how they're going to do research  
5 which is the -- you know, which is really the most  
6 horrendous joke of all time But this -- you can't  
7 see it, but it says here we accept an interest in  
8 people's health Yeah, right. And then they say we  
9 always -- oh, up here Wait a minute Where they  
10 say we do not -- there is no proof that cigarette  
11 smoking is one of the causes of disease

12 That has been the mantra of the cigarette  
13 industry, including Brown & Williamson, to today  
14 And in saying that, the evidence will show they have  
15 become the only people saying it in the world They  
16 are an isolated industry now hanging onto the idea  
17 that they can keep saying that their product doesn't  
18 cause diseases I guess until somebody says to  
19 them, No, you're wrong, it does cause diseases

20 But anyway, they took out this to try an  
21 influence people and to try to get people not to  
22 worry I know you can't read it, so I'll just  
23 summarize It says basically, Look, you've heard  
24 about some problems because there was press --  
25 certainly there was -- about the mouse painting

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1 experiment, Wynder and Graham It was publicized  
2 You know, these doctors claimed that it  
3 caused cancer There was no question Some people  
4 believed it, some people didn't believe it I don't  
5 know These people or the cigarette industry  
6 through this tobacco industry research committee,  
7 which they were a member, decided that what they  
8 wanted to do was to protect theirs and try to argue  
9 the other side Always trying to say, Oh, no, no,  
10 it's not proven It's not really proven Don't  
11 worry

12 Well, you know, that's interesting The  
13 day you do that you've really made a bargain with  
14 the devil, I suggest I mean, now you're saying,  
15 Okay, we're going to argue our side to try to -- so  
16 you won't feel nervous about cigarettes. So that  
17 stuff you read or the stuff you hear, don't worry  
18 about it. It may not be true We'll hire some  
19 doctors that say it isn't really true. We're not  
20 convinced. It gets you to lull you, to hope that  
21 you'll keep inhaling and to keep buying the  
22 product.

23 Now, we'll prove that that is a violation  
24 of this products liability law that happened back  
25 then and reaches fruition today Just because it

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1 takes a long time to grow cancer in people's lungs  
 2 Next Moving on I've only got about 15  
 3 more minutes and I still have most of the plates  
 4 that I wanted to show you, about 90 percent of the  
 5 plates I'll do my best  
 6 Okay So -- Mr Wilner, you kept telling  
 7 us all these studies that happened back then  
 8 What's the big deal? Well, look, I've got to show  
 9 you this This is bread and butter stuff This is  
 10 from 1954 and extended to 1958 It was from a big  
 11 study done by -- for the American Cancer Society and  
 12 this was a bread and butter study done to prove or  
 13 to show whether or not cigarettes caused cancer  
 14 And they found that -- this is the number of packs  
 15 per day and the cancer death rate is 217 for lung  
 16 cancer and for nonsmokers it's three  
 17 Well, I don't know you, but I suggest to  
 18 you and the evidence will prove that when you get  
 19 numbers like that, like almost 80 to one or  
 20 something, that you are talking about a very serious  
 21 effect I mean, you can't possibly explain You  
 22 know, you can stand on your head and you can't  
 23 explain a situation like that  
 24 And we will put on evidence that that  
 25 information is what has to be conveyed to people

1 are twice as high. I think cigarette smokers and  
 2 nonsmokers need to know that information. That  
 3 means that 50 percent of cigarette smokers, regular  
 4 cigarette smokers, will die prematurely from  
 5 cigarette smoking from one disease or another  
 6 That is something that everyone who  
 7 considers whether they smoke cigarettes should  
 8 know Not just the general idea can cause disease  
 9 You're talking bad odds Fifty percent is a bad  
 10 odd It's bad It's a high risk. Nothing else you  
 11 do has anywhere near that kind of risk  
 12 Why isn't this public? I don't know  
 13 Interesting You can evaluate this evidence when  
 14 you hear it come in You can see who has publicized  
 15 it, where it's been, how reliable it is I invite  
 16 your consideration of that  
 17 Next, please Two to one Death rate two  
 18 to one  
 19 Here is dose/response in 1952 Well,  
 20 let's not get into it I don't have time  
 21 Next, please And -- okay, these are just  
 22 all the studies I don't want to bore you Every  
 23 single one showed a huge increase from cigarette  
 24 smoking, every single study Some of them were  
 25 lower than others There was 120 percent That's

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1 Not the generalized idea you may get cancer Any-  
 2 body may get cancer Not the idea that you might  
 3 get from the newspaper it can cause cancer, because  
 4 lots of people think lots of things cause cancer I  
 5 mean, you know, the air could cause cancer People  
 6 think air pollution They think bad food Who  
 7 knows?  
 8 That doesn't convey this I mean, do you  
 9 think that if the risk of lung cancer from the air  
 10 from living in one city was 217 and the risk of  
 11 another was three, that that situation would go on  
 12 very long? No way That would be a panic That  
 13 would indicate that there was something terrible  
 14 going on That city would be evacuated These are  
 15 deaths These aren't just people who feel bad  
 16 This kind of thing -- the incredible thing  
 17 about it is it kept happening and happening every  
 18 time somebody said, Let's do a study and let's do it  
 19 really well and let's get the biggest study we can  
 20 get Let's get a million people. Let's get a  
 21 million man years Every single time it comes out  
 22 like that.  
 23 Next, please Total death rates are twice  
 24 as high for cigarette smokers as for nonsmokers, as  
 25 proven in this plate from 1959 Total death rates

1 the lowest I've ever seen This one is 1300 percent  
 2 among smokers This is 3600 percent Consistency  
 3 Next, please These are all from the  
 4 '50s, never responded to 1,000 percent, 7,000  
 5 percent, 2,000 percent All consistent Never  
 6 responded to  
 7 Next, please Okay Here is another line  
 8 of proof Since we're talking proof, let's talk  
 9 proof This was an important pathology study  
 10 Pathology is when you cut the lung or you cut the  
 11 tissue and you look with a microscope and you see  
 12 what's happening in the microscope. This was really  
 13 another leg on the chair, you know, another link on  
 14 the chain It wasn't necessary, but the scientists  
 15 wanted to prove, Well, look, we want to prove that  
 16 there are cellular changes happening and we strongly  
 17 suspect there are.  
 18 So here is the lung of a -- this is a  
 19 normal lung in a nonsmoker And you can see that  
 20 they've got -- this little area up here is called  
 21 the cilia, and they're little hair-like things that  
 22 pump mucous around inside your body, inside your  
 23 lung And they're important You need them. So  
 24 this is normal; a person looks like that.  
 25 Next Remember that little area This is

1 what happens in a moderate smoker Ooh, they're  
2 almost gone. And the cells here are beginning to  
3 look kind of crudy And this was done in a large  
4 scale -- I'm just pulling out two, but this was a  
5 big study done in 1957. Actually this is '55 data  
6 so it's even earlier than that. See these cells.  
7 They don't look so good They're on their way to  
8 becoming cancer cells

9 This really shook people up when they saw  
10 it I mean, people knew -- were beginning to know  
11 But scientists understood that this was an  
12 incredible thing to show in all these people that  
13 they were getting precancer  
14 Next, please Here is a heavy smoker  
15 That's cancer in situ or actually a preinvasive form  
16 of lung cancer which was unknown to that patient  
17 These are typical lesions and they happen in all of  
18 the series They happen in a tremendous percentage  
19 among the people who are heavy smokers And they  
20 proved beyond a shadow of a doubt that the stuff was  
21 getting to them and was capable of causing the  
22 cancer and was causing the cancer As if anybody  
23 really needed that information at that time The  
24 scientists were pretty much convinced, but it's  
25 another link on the chain and it's important

1 Now, what did the cigarette companies,  
2 including Brown & Williamson, have an obligation  
3 here? I would think that this also has to be  
4 publicized, because some people may be skeptical  
5 They may say, Well, it might not happen to me It  
6 will happen It will happen to you Your cilia  
7 will get damaged When they're damaged, the  
8 protection of your lung is damaged So it will  
9 happen to you

10 Now, that doesn't mean that we're here to  
11 ban smoking It just means that we suggest that the  
12 product liability law required full disclosure, not  
13 beating around the bush and certainly not arguing  
14 the opposite and saying don't worry

15 Next, please Moving along This is  
16 emphysema Mr Carter has emphysema. It's mild, we  
17 agree. It's caused by cigarette smoking, as even  
18 the consultants for Brown & Williamson now admit  
19 Now, this is what it does to your lungs  
20 Mr Carter's case is mild now It's incurable and  
21 largely irreversible. This is -- one of the biggest  
22 problems of cigarette smoking today is chronic  
23 obstructive pulmonary disease of which emphysema and  
24 chronic bronchitis are a part.

25 Next, please That's the rise of

1 emphysema. It looks just like the rise of lung  
2 cancer caused by inhaling cigarettes  
3 Next, please. We have lots to go I've  
4 got to go fast  
5 All right This is incredible  
6 Ninety-one percent of the people in this series who  
7 smoked unfiltered cigarettes got emphysema, grade  
8 four or five fibrosis, which was his term for  
9 emphysema at the time Look at that Ninety-one  
10 percent of them. That means it's not a bolt from  
11 the blue It's a process that happens If you live  
12 long enough, you're going to get one of these  
13 diseases We hope not, but it's likely to happen to  
14 you

15 Next please And heart disease -- oh,  
16 urban/rural I just wanted to point out that people  
17 who have said air pollution, they were proven wrong  
18 in 1958 Here is the urban/rural distinction It's  
19 true that more nonsmokers -- these are nonsmokers  
20 down here getting cancer These are the smokers  
21 getting lung cancer up here There is a little  
22 difference, but it's a joke compared to the  
23 difference in cigarettes  
24 That kind of evidence, you know, it just  
25 blows you away I mean You can always say, oh,

1 what about air pollution? Look at that That's the  
2 evidence It's a little tiny bit but, you know, who  
3 cares? The sky is blue Sure there is a cloud  
4 It's the sky is blue, though  
5 Next And this is the sad thing that  
6 happens when you start young Nonsmokers death rate  
7 right there If you start under 15, you've got 16  
8 times the risk, 1,600 percent If you start -- if  
9 you can wait five years, your risk drops to there  
10 If you can wait until you're 25, it's only one-third  
11 of if you started under 15

12 It's something to tell children It was  
13 never put on the package It should have been put  
14 on the packages This is back in -- this says '66  
15 This information was available in 1955 It should  
16 have been published right then You bet. If you  
17 smoked really young, your risk is much, much worse  
18 because of your growing lung problem, you know, how  
19 it grows and the cells are dividing You're really  
20 vulnerable

21 And, you know, once that happens you can't  
22 take it back You can't go back in time and say how  
23 I've decided I don't want to smoke. And kids start  
24 smoking Why do they smoke? Well, maybe if their  
25 parents had that information, they'd be tougher on

1 them Maybe not But they deserve the  
2 information If they're not tough, they're not  
3 tough I mean, we can't cure the world But the  
4 product liability law says you put the full  
5 information out there and then you let people do  
6 what they want That's the way this country is run

7 Next, please And heart disease, oh, boy,  
8 sudden death, which is falling on your face and  
9 dying without warning That's nonsmokers, that's  
10 smokers It's enough to give you some thought  
11 You'd like to see it publicized

12 Next, please I'm sorry to work you I'm  
13 working her, aren't I, but I'm almost done I'm  
14 running out of steam

15 Okay What's in cigarettes, you say? All  
16 sorts of crazy stuff Why hasn't it ever been put  
17 on the label? Good question Known carcinogens are  
18 on cigarettes that have never been put on the  
19 label There is no excuse Anything you eat, you  
20 have a right to demand what you're eating And if  
21 you smoke, you have a right to demand it It's been  
22 hidden largely and it's never been publicized I  
23 won't go through all the names because we don't have  
24 time But you'll hear about them later

25 Next, please I'm trying to finish

1 That just shows that all of the studies  
2 are very high

3 Next, please Twenty times the risk

4 By 1962 all of these organizations had  
5 concluded it was proven They had -- many of them  
6 before that, the American Cancer, American Heart,  
7 Public Health Cancer Brown & Williamson is not on  
8 the list

9 Next, please Let's skip that That's  
10 too many numbers We're running out of time And  
11 skip the next one

12 Okay I just want to share this one with  
13 you and then we'll take a break from the numbers  
14 When the full impact -- this is today This is from  
15 CPS II, which is today's epidemiology, modern  
16 stuff It doesn't differ very much, but it's  
17 bringing everything up-to-date This is the kind of  
18 Reiteman Weep figures that are important to  
19 understand when anybody ever talks about risk  
20 because this is the risk of smoking, right here

21 Smokers versus nonsmokers And look at  
22 the risks down here I mean, there are some things  
23 you've never heard about, like cancer of the  
24 bladder, 286 percent increase Why isn't that  
25 publicized? It should be.

1 Cancer of the kidney -- you know, people  
2 may not want to take that chance of cancer of the  
3 kidney Maybe they've lost a kidney already and  
4 they don't want to take a chance So why is it  
5 there? It should have been a long time ago This  
6 isn't new This is just up-to-date Cancer of the  
7 larynx, 1,000 percent Cancer of the lip and mouth  
8 2,700 percent That's a terrible statistic And  
9 cancer of the lung, the current view is 2,236  
10 percent increase Ninety percent of all the cancers  
11 in the lung in the United States are attributable to  
12 cigarette smoking

13 That is the current modern belief that all  
14 the scientific community that's addressed has  
15 expressed in the surgeon general's report in 1969  
16 And I think that that merits a little bit of looking  
17 at I mean, that is not just one of the risks of  
18 living That is a major, major problem, and it is  
19 incredible that it hasn't had more publicity

20 Next please Ninety percent Moving on

21 These were the warnings I promised to tell  
22 you Before '66 none '66 to '70, that's the  
23 warning -- we're mainly back here in this area in  
24 this case The damage was done to Mr Carter's  
25 lungs from '47 before '66 That damage was done

1 We'll prove that And there was nothing on that  
2 '66 to '70, this mild, may be hazardous In the  
3 face of what we've seen, was that adequate? I  
4 suggest it wasn't

5 Next, please And these are the current  
6 ones right here The one mention of cancer in 1984,  
7 the three that don't, and this is the other one that  
8 just says it's dangerous, but it doesn't say how  
9 much It doesn't say what or how, whatever

10 We're not -- our claim stops in '72  
11 because of the -- we get into that maybe a little,  
12 but not much Most of our damage is early and, you  
13 know, we can all speculate whether in '84 or not,  
14 but it's not a legal issue today

15 Next This tells us why that none of  
16 these warnings -- or the '66 warning anyway wasn't  
17 any good, because it just isn't the kind of thing  
18 that motivates people It doesn't say don't inhale,  
19 which is what it should have said It doesn't warn  
20 of addiction It never did Addiction was known  
21 It was never warned It didn't give advice to  
22 minors It should have done that It didn't warn  
23 of excessive use It should have done that It  
24 didn't list the ingredients It should have done  
25 that Lots of problems

1 They could have solved them This is all  
2 warnings I haven't even talked to about how they  
3 could have improved the product, how they could have  
4 made it so that it was much less likely that people  
5 got cancer, how they could have really worked on  
6 filtering the carcinogens out of that smoke, how  
7 they could have reduced the amount of nicotine in it  
8 so that it wouldn't get people hung up, and how they  
9 could have produced a product that avoided the kind  
10 of dangers that they were faced with

11 I won't have time to tell you in detail  
12 You'll have to hear that when the doctors testify

13 Next, please Five minutes? An hour  
14 Oh, okay, so we've got another ten minutes Good  
15 Not good -- maybe you say not good Time to sit  
16 down I understand I'm almost done

17 Okay So, Mr Wilner, you talked about  
18 addiction First you talked about cancer and all  
19 these diseases Talk to me a little bit about  
20 addiction because, you know, I've heard about it  
21 What is it? What's the evidence going to show about  
22 addiction?

23 Okay Cigarettes have nicotine which is  
24 proven to be an addictive substance There has been  
25 over the years some debate, some legitimate debate

1 The lung cancer business, there really has not been  
2 legitimate debate There has been cigarette  
3 interests denying things, but not legitimate  
4 debate

5 But over addiction there has been because  
6 way back when most people only used that term to  
7 talk about addicts that were in the street shooting  
8 heroin And that -- it meant that you were out of  
9 your mind and that, you know, you were robbing  
10 grocery stores I mean that was kind of a  
11 pejorative nature of addiction

12 So back in '64 when the surgeon general  
13 wrote his first report, he said, well, we don't  
14 consider cigarettes part of that because that's a  
15 drug culture and we think cigarettes are a habit  
16 Incidentally, the '64 report said cocaine is not  
17 addictive either It's just a habit So, you know,  
18 who knows?

19 Anyway, things began to roll That was  
20 not the only -- there is an interesting twist to the  
21 '64 report that I will mention just parenthetically,  
22 and that is that it appears that there was research  
23 done by certain cigarette companies that proved that  
24 nicotine was addictive that was never turned over to  
25 the surgeon general before 1964 Interesting And

1 I'll show you that in a minute, just in the next  
2 minute

3 Next, please Oh, wait Before you turn  
4 that Eight out of ten smokers say they wish they  
5 had not started Seventy percent of young people  
6 who smoke say they are dependent And, you know,  
7 forty percent of people who have their larynx, their  
8 voice box, removed for cancer, 40 percent of those  
9 go back to smoking through the hole If that's for  
10 taste, I can't imagine how since your lungs can't  
11 taste anything It doesn't even go through your  
12 mouth

13 So how anyone can contend today with what  
14 we know today about the action of nicotine on the  
15 brain, that nicotine does not have the capacity to  
16 hook you, whether you want to call it addiction,  
17 dependence -- I don't even care what you call it  
18 The point is, it's a chemical that hooks you Does  
19 it take away free will? No, not really You've  
20 still got your will, but you've got the agony of  
21 this drug in your brain And that's a problem

22 I think that's a problem I think that  
23 that is not something to blame on the consumer of  
24 the product who got the drug in his brain I think  
25 that's something to go to the manufacturer and say,

1 why is it this product is putting this drug in  
2 people's brains that's making them act like this and  
3 keep taking products that they don't really want?  
4 Or they may want a little or they may even like it  
5 but they know they shouldn't What a strange  
6 product it is

7 Next, please 1988 report of the surgeon  
8 general, major conclusions Cigarettes and other  
9 forms of tobacco are addictive The surgeon general  
10 of the United States Not just Mr Wilner

11 Nicotine is the drug in tobacco that  
12 causes addiction The pharmacologic -- that mean  
13 drug -- and behavioral processes that determine  
14 tobacco addiction are similar to those that  
15 determine addiction to drugs such as heroin and  
16 cocaine This is the surgeon general of the United  
17 States I mean, those are fighting words That  
18 doesn't pull any punches And this volume, which we  
19 have here -- somewhere -- I forgot where I put it --  
20 it's a big thick volume and it documents it all  
21 These are just the conclusions I pulled out This  
22 research has been done and it's a drug

23 Now, again, you say, well, this is a big  
24 area of political controversy and the FDA is going  
25 to regulate or not regulate Again, that's not our

1 function here. We're not the FDA We don't have to  
2 decide that.  
3 The only reason this is important is this  
4 is part of why we think this product was defective  
5 and why we think Brown & Williamson didn't do its  
6 job. And they know that it had this power, and the  
7 least they should have done, the least is to tell  
8 people about it. And say, look, remember, this is  
9 serious You can get hooked  
10 Instead of denying it all the time and  
11 saying, aw, anyone can quit, just make your mind  
12 up. They should be honest and say, no, no, no,  
13 listen This could be a lifelong problem This  
14 isn't just a little silly thing that you're doing  
15 It's not just a candy It's not a breath mint  
16 It's not chocolate  
17 The suggestion was made in jury selection  
18 that you can get addicted to golf Chocolate and  
19 golf causing cancer, a 2,000 percent increase in  
20 cancer? If so, it would be a serious problem to get  
21 addicted to chocolate if it caused cancer, 2,000  
22 percent, if it killed 50 percent of the people who  
23 used it You bet you I'd go right back to those  
24 chocolate people and I'd say, what's in here?  
25 What's going on?

1 This is not something -- you cannot  
2 trivialize it and say this is only chocolate No  
3 big deal It's chocolate  
4 Next, please This is the one of the  
5 latest statements from the medical literature,  
6 physicians in 1991 Tobacco experimentation  
7 frequently leads to daily use, which is  
8 characterized by a highly consistent pattern of drug  
9 intake Such a pattern is controlled by the  
10 biologic concentrations of nicotine, a psychoactive  
11 -- that means it acts on your brain -- constituent  
12 of tobacco smoke This is the science  
13 Next, please. It's not a matter of just  
14 guesswork It's -- oh, remember I said, like  
15 heroin This is a great chart and this came out of  
16 the '88 I'm almost done with the charts I know  
17 it's getting late  
18 This is the relapse rate. You know,  
19 everybody can quit. Anybody can quit smoking The  
20 trouble is the relapse rate is horrendous. Only  
21 about ten percent of people who try succeed in any  
22 particular year  
23 Look at the relapse rates for these  
24 drugs There is heroin. This is months relapse  
25 down at that time bottom, months And this is

1 smoking cigarettes and that's alcohol What does  
2 that tell you? It's so similar. It tells you there  
3 is something not biological, not that it's just a  
4 matter of, by golly, I'm going to do it today.  
5 Well, heroin addicts can do it, too, but they  
6 relapse A lot relapse  
7 It doesn't prove that you can't do it. It  
8 proves that it's agony It proves that it's a drug  
9 in your body that maybe you didn't know about when  
10 you first got started and you really should know all  
11 about if you're going to put these drugs inside your  
12 body because they may stay with you your whole life  
13 Next Commissioner of the FDA said, More  
14 than 15 million individuals are unable to exercise  
15 their choice, which is smoking or not, because they  
16 cannot break their addiction to cigarettes My  
17 concern is that the choice that they are making at a  
18 young age quickly becomes little or no choice at all  
19 and will be difficult to undo for the rest of their  
20 lives  
21 Next, please That's the commissioner of  
22 the FDA I don't need the death rate again I  
23 don't need PETO Got to get to the end Oh, yes,  
24 put that up I always say one more turn Okay  
25 Now I'm going to get to something interesting and

1 then I'm going to be done  
2 Okay Again, it's this business of  
3 chocolate, you know, risks of life You've got to  
4 see this This is a risk of various activities  
5 This is out of the 1979 or '89 surgeon general's  
6 report These are the deaths per million for  
7 exposed people 7,000 per million died of  
8 cigarettes Five hundred die of alcohol 275 die  
9 of alcohol from disease  
10 So, you know, a lot of people say, well,  
11 if you're going to sue about cigarettes, why don't  
12 you sue about alcohol? Well, this is one good  
13 reason Alcohol can be used responsibly It does  
14 not kill 50 percent of the people It does not  
15 Among the users, 541 are killed Most of those are  
16 in accidents I mean, those are accidents We  
17 certainly are not here telling you to drink and  
18 drive That has nothing to do with what I'm  
19 saying.  
20 275 get involved with disease and  
21 alcohol I think that's terrible. I'm not here to  
22 tell you it's good I'm just telling you that we're  
23 not here to talk about alcohol, we're here talking  
24 about cigarettes which kill 7,000 out of a million  
25 So we're here today as our little cogs to talk about

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1 that; 7,000 as opposed to 241 alcohol deaths as  
2 opposed to 95 motor vehicle Look at the air  
3 pollution Six per million. Look at the football  
4 That's the same  
5 I mean, this stuff is silly This is the  
6 biggest thing around Not too big for us to  
7 handle We're cogs We're just here to do our  
8 job We're just here to follow the evidence and  
9 follow the law That's all we can do  
10 Next I don't need that Thanks Cut  
11 corners  
12 Okay What should they do? They should  
13 don't inhale cigarettes They should have said that  
14 from 1941 -- from 1949 Don't inhale Don't  
15 inhale It kills you to inhale It addicts you to  
16 inhale Don't inhale  
17 Next Build a cigarette so that you can't  
18 inhale it. Put this package insert in your  
19 cigarettes It says Danger Health hazard And  
20 you'll get this package insert, and it has detailed  
21 direction You know, whenever you get drugs, buy a  
22 package of something, and you open it up and it  
23 says, oh, gosh, you know, all these studies that  
24 have been done and the risk That's information  
25 Now, look, you read that You're on your

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1 own You read that, you're on your own You  
2 deserve to get it If you tell me that you ain't  
3 going to read it, okay, you ain't going to read it  
4 But this great country demands information because  
5 it's a free country So you've got to get the  
6 information We're going to present you with what  
7 we think should have been folded up in every  
8 cigarette package and give people so that they're  
9 able to make informed choices, not choices based on  
10 who knows what, hearsay, God knows what  
11 Next Okay All right Now, here is my  
12 last five minutes of comment  
13 When all of this was going on, what was  
14 going on with American Tobacco, the predecessor of  
15 Brown & Williamson? What were they doing when all  
16 this research was coming in? What were they doing  
17 when they were finding out that cigarettes were  
18 causing lung cancer 2,000 percent higher? What were  
19 they doing?  
20 This is what they were doing Business as  
21 usual "Reach for a Lucky instead of a sweet."  
22 Inducement? Trying to suggest to people it was  
23 good.  
24 Next "There is never a rough puff"  
25 "Let your throat be the judge." The number one

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1 cause of throat cancer "Let your throat be the  
2 judge"  
3 Next "Be happy Go Lucky!" You've seen  
4 these Maybe they don't mean anything Everybody  
5 advertises their product But you've got to  
6 remember while all of this was going on, research  
7 was proven that they were cancer, that they were  
8 death Nothing about that suggests the slightest.  
9 I wonder whether you can go too far with this  
10 Next Be happy Go Lucky Don't worry  
11 Everybody is fine  
12 Next This beauty -- this actually -- you  
13 can barely even see it, I'm sorry 20,000  
14 physicians -- this is actually an earlier one It's  
15 actually back in the '30s sometime and I apologize  
16 for the terrible view there I've got a color one  
17 we'll see later You know, a doctor with a  
18 cigarette Can you imagine? What is that supposed  
19 to be telling you, you know?  
20 Next You'll see that in color It's a  
21 lot easier  
22 This is what Paul Hahn, the former CEO of  
23 American Tobacco, said in 1953 after the mouse  
24 painting experiments had proved that cigarette tar  
25 causes cancer He said, there is no proof He

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1 wanted to keep selling, and he said loose talk is  
2 assailed Loose talk? Researchers trying to save  
3 people's lives is loose talk?  
4 I suggest to you, and the evidence will  
5 show, that this was a negligent, negligent act  
6 This bordered on a criminal act This is not the  
7 right thing to do You've got to tell people the  
8 truth You've got to say, look, some researchers  
9 have found there may be a problem Now, look, if  
10 you want to smoke, okay, but we're not going to pull  
11 any punches We're going to tell you the facts  
12 But, no, loose talk, an act of researchers Blame  
13 them It's the wrong response  
14 We're here today to try to make up for  
15 some of this stuff that happened.  
16 Next, please. American Tobacco Company in  
17 '55 says, the public is generally coming to realize  
18 that no real case has been proved against tobacco,  
19 and the present state of scientific knowledge on the  
20 subject does not justify dogmatic conclusions. Easy  
21 to say How many people believed this when they  
22 read it? Maybe a lot. Maybe a lot. They say the  
23 public is beginning to believe that no case has been  
24 proven They're out fighting, fighting the  
25 scientists. It's not right. Many scientists

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1 challenge. Sure There were many scientists on  
2 payroll

3 Next Okay Some documents are more  
4 interesting than others, and I've got three to show  
5 you. And then, honestly, I'm done. This document  
6 came out of the files of Brown & Williamson and it  
7 says this -- it's just a piece We don't have time  
8 to explain the whole context. But they were  
9 involved in a research effort with a British tobacco  
10 company called BAT And that tobacco company was  
11 doing research, and some of the research is pretty  
12 interesting but it wasn't made public until  
13 recently

14 So this is an excerpt from that that said  
15 that -- Mr Griffith is a Brown & Williamson  
16 scientist who has just been to Europe, just been to  
17 England, and he has just talked to the people in  
18 England And he says, The scientists with whom I  
19 talked were unanimous in their opinion that smoke is  
20 weakly carcinogenic -- that means causes cancer --  
21 under certain conditions and that efforts should be  
22 made to reduce

23 But that wasn't what they were telling  
24 people at the time In their news releases they  
25 were saying no, but their own scientists were

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1 saying, well, we've got a problem

2 Next, please You'll see all of that  
3 correspondence in a package you will be evaluating  
4 From the British group this important work  
5 called a tentative hypothesis of nicotine  
6 addiction And this proved back in 1962 that the  
7 cigarette industry knew that nicotine was  
8 addicting Let me read it because you'll just -- I  
9 don't know A few of you are cigarette smokers but  
10 it rings so true

11 A tentative hypothesis for the explanation  
12 of nicotine addiction would be that of an  
13 unconscious desire to restore the normal  
14 physiological equilibrium of the corticotropin  
15 releasing system -- whatever that is -- in a body in  
16 which the normal functioning of the system has been  
17 weakened by chronic intake of nicotine.

18 That came from the cigarette company's  
19 file. Why was that not shown to people so that they  
20 would understand that when they took this nicotine  
21 in it would weaken them. Their system would be  
22 weakened.

23 We suggest that we will -- the evidence  
24 will show that maybe people would want to know if  
25 the product would weaken them in that way maybe for

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1 life. It certainly would be something that you  
2 would level with somebody

3 And we go up to the present, which is  
4 Donald S Johnson, who is CEO of American Tobacco,  
5 one of the people swearing in front of Congress  
6 today or in 1994 that cigarettes were not addictive,  
7 did not have problems, and that brings up to date  
8 with this long story of denial

9 Next. The last thing I will talk about is  
10 this business of when did Grady Carter file his  
11 case I have to talk about it because they've  
12 raised it If Grady Carter has four years to file  
13 his case and he filed it on February 11, 1995, so  
14 the operative date is February 11, 1991, which was  
15 four years before that. And the question is, did he  
16 have a case before February 11th? And if he had a  
17 case, then he didn't file it on time But if he  
18 didn't know about his case until after  
19 February 11th, then he had four years to file

20 Well, there is no question that he filed  
21 within his four years, because a person who has --  
22 in order to have a case you've got to have a  
23 diagnosis You can't file a case on what you think  
24 is the case, and you'll be instructed on that

25 So what is the situation? Well, on the

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1 4th, which was before, he goes into Dr Yergin and  
2 Dr Yergin says he's got something suggestive of a  
3 neoplasm Now, neoplasm is cancer, but this was the  
4 x-ray So on the 4th he gets x-rayed and Dr Yergin  
5 says, well, it's suggestive, but I need to do the  
6 tests

7 The tests are the bronchoscopy where they  
8 look down your throat in your lung and they take the  
9 tissue and they send it to the lab and the lab comes  
10 back The doctor doesn't sit down with a patient  
11 and say you've got lung cancer until they do it and  
12 they see it because there are other things -- an  
13 x-ray is just a shadow So that was the 4th. And  
14 move on

15 This was the 12th when he came back in  
16 They had done the bronchoscopy and this is when he  
17 had his case. He came back to review the bronch  
18 results, finished his CAT scans, but the results are  
19 not available At today's visit they're  
20 apprehensive. And there is the assessment,  
21 adenocarcinoma. It says results are compatible with  
22 well differentiated adenocarcinoma of the lung, and  
23 that is the diagnosis.

24 The first time it happened was the 12th,  
25 and he filed his case four years and minus one day



1 So it was timely filed based on that diagnosis  
2 It's just an issue that I guess has come up  
3 Next, please. Just to prove it, here is  
4 the letter from Dr Yergin to a life insurance  
5 person who says, please be advised that a fiberoptic  
6 bronchoscopy performed on Mr. Carter February 12th,  
7 tissue proved to be adenocarcinoma That was just a  
8 minor thing

9 I am now done I want to tell you I  
10 appreciate the time that you spent with me I know  
11 that it probably was a lot longer for you than it  
12 was for me because I had all of this stuff to talk  
13 about I apologize if I was too loud. I get  
14 excited about this issue I think this is an  
15 interesting case It's a fascinating case It's  
16 not a case that's too big It's not a case that's  
17 too small We're cogs We're going to be good  
18 cogs

19 I appreciate your time so much Thank  
20 you

21 THE COURT We will stand in recess until

22 3 40

23 (Recess, change of reporters)

24

25

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1 THE COURT Ready?  
2 MR. SHEFFLER Yes, Your Honor.  
3 THE COURT Mr Ford, bring the jury in,  
4 please.  
5 (Jury present)  
6 THE COURT Be seated, please  
7 Mr. Sheffler  
8 MR SHEFFLER May it please the Court.  
9 THE COURT Yes, sir.  
10 MR SHEFFLER Mr and Mrs. Carter,  
11 Counsel, Ladies and Gentlemen of the Jury, good  
12 afternoon The good news is I'm not going to be  
13 as long as Mr Wilner The bad news is, I do have  
14 to spend some time reviewing the evidence that we  
15 believe you will hear during the course of this  
16 trial because Mr. Wilner and I have a very  
17 different view of what that evidence will show and  
18 what that evidence will be  
19 Now, you may have gotten the impression  
20 from listening to Mr Wilner's recitation of the  
21 evidence that the case at issue here involves some  
22 product liability law that has a lot of different  
23 claims, a lot of different issues And he jumped  
24 around and talked about statistical evidence from  
25 '50s, '80s, whatever. The claim in

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1 this case is fairly straightforward The claim is  
2 that Grady Carter was injured as a result of  
3 smoking Lucky Strikes from the period of 1948  
4 until 1972 And the claim, the legal claim is  
5 that The American Tobacco Company, as you  
6 understand, The American Tobacco Company was  
7 acquired by Brown & Williamson, but the real party  
8 here is The American Tobacco Company  
9 The claim here that Mr. Carter is  
10 bringing is that The American Tobacco Company knew  
11 something about lung cancer and smoking that the  
12 American public did not It knew something more  
13 about the signs of lung cancer and smoking than  
14 was out there for the American public to hear.  
15 That is his claim It's the failure to warn claim  
16 that is at the very bottom of this suit.  
17 All of this talk about statistics and  
18 everything else, it all comes down to this. Did  
19 American Tobacco, during the period in which  
20 Mr. Carter smoked its cigarettes, know more about  
21 lung cancer and smoking than was known to the  
22 public of which Mr. Carter was a member.  
23 Now, we're going to hear a lot of  
24 evidence about that claim. And there's some other  
25 claims as well. There's the claim here about

1 addiction. We're going to hear some evidence  
2 about that. We're going to hear evidence about  
3 why Mr. Carter smoked. Why he chose to smoke  
4 Lucky Strikes Why he smoked Lucky Strikes until  
5 1972 and then stopped smoking them and changed to  
6 different cigarettes Why didn't he quit. Why  
7 did he not quit smoking until 1991  
8 And that date is important. The date he  
9 quit smoking is important because it is the belief  
10 of Mr Carter that is at issue here with respect  
11 to this claim of statute of limitations  
12 When did he believe he had lung cancer  
13 And the date on which he came to that realization  
14 is the date when the clock started running for him  
15 to bring the suit. And we're going to talk about  
16 that as well  
17 And the final thing we're going to talk  
18 about is cancer itself, cancer causation Now,  
19 cancer causation is a very difficult issue And  
20 it's technical and there's going to be a lot of  
21 technical evidence adduced  
22 You saw a lot of statistical evidence  
23 from Mr Wilner that he claims his witnesses will  
24 tell you about Mr Wilner's claims about this  
25 evidence, as you know, is not evidence That's

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1 what the Court's told us The evidence will have  
2 to come from the witnesses  
3 We believe that the proof and the  
4 evidence in this case will show you that in the  
5 1960s up through 1972 and even today the cause,  
6 the actual cause of cancer, the reason why a cell  
7 gets transformed and becomes a neoplastic cell,  
8 becomes a cancer cell, the reason for that is  
9 still unknown There's research going on today to  
10 what causes cancer  
11 Now, we're going to get into that, too,  
12 and I'll tell you a little bit as well about what  
13 the evidence will show with respect to  
14 Mr Carter's cancer Because he had a very  
15 specific type of cancer  
16 There are various types of lung cancer.  
17 As you probably do know, lung cancer is a number  
18 of diseases There's what's called a squamous  
19 cell carcinoma and an adenocarcinoma and there's  
20 different types of lung cancer And even many of  
21 them have different associations with different  
22 factors, risk factors. And we'll talk about that  
23 and we'll see that evidence at trial.  
24 Now, let me go back to one point,  
25 though, that I wanted to clear up And that was

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1 the issue of warnings You might have got the  
2 impression earlier that there was something wrong  
3 with the warnings that were on the cigarette  
4 packages of Lucky Strikes from 1969 on. You might  
5 have heard that there had to be something that was  
6 added to that package to make it correct. That  
7 there had to be more information than was on the  
8 package label

9 Well, first of all, those package  
10 labels, those warning labels were drafted by the  
11 United States Congress And as a matter of law,  
12 The American Tobacco Company had to put on its  
13 packages exactly that language They couldn't  
14 vary it That was the law.

15 And, second, there is no claim in this  
16 case that the warning that was on the package '69  
17 forward isn't anything other than adequate  
18 There's no claim in this case that The American  
19 Tobacco Company should have done something more  
20 American Tobacco Company should have put on "don't  
21 inhale" or any of these other warnings that were  
22 tossed out there There's no claim in this case  
23 that after 1969 the warnings on the packages were  
24 anything but adequate So what we're focusing on  
25 is a period before 1969. What was known by The

1 community at the time

2 So what did the scientific and medical  
3 community know? Well, in the '40s there were some  
4 speculations about lung cancer and a variety of  
5 factors Everything from road tar, to electric  
6 poles, to cars, exhaust from cars, to air  
7 pollution and smoking were considered possible  
8 factors, suspects, suspicions, speculation But  
9 what was the medical community as a whole saying  
10 about those speculations

11 You will hear and you will see documents  
12 from medical journals that establish that the  
13 American Medical Association, which is the  
14 collection that most doctors belong to, it's an  
15 organization that continues today The American  
16 Medical Association, the American Cancer Society  
17 together reviewed all of the evidence in the '40s  
18 and came to the conclusion that there was no  
19 reason for doctors to advise their patients who  
20 were smokers to stop smoking because of lung  
21 cancer That was in 1948, '49 You'll see that  
22 evidence There was no consensus in the medical  
23 or scientific community about the cause of lung  
24 cancer There wasn't even a relationship between  
25 smoking and lung cancer at that time We're

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1 American Tobacco Company, what was known by the  
2 public

3 Now, the evidence on this will come from  
4 a number of sources. It will come from witnesses  
5 and it will come from documents Documents from  
6 the time We talked a little bit yesterday about  
7 the importance in looking at this evidence To  
8 take yourself out of today's frame of mind and put  
9 yourself in the frame of mind of the '40s, the  
10 '50s, the '60s, right after World War II And  
11 when you see the evidence at that time, it's  
12 important to remember that a single study here or  
13 a speculation there doesn't establish what the  
14 medical community was thinking and believing It  
15 doesn't establish what was generally known in the  
16 scientific community.

17 And that's what we're focusing on in  
18 this trial. Because the claim is that The  
19 American Tobacco Company knew what the medical  
20 associations and knew what the medical scientific  
21 associations knew, and that that was something  
22 different than what the American public knew.

23 The American Tobacco Company had no more  
24 knowledge about lung cancer and smoking than the  
25 medical community at the time or the scientific

1 talking about the '40s

2 In the '50s there were a few studies  
3 that started to be published And these studies  
4 were epidemiology studies Epidemiology was a new  
5 science at that time It was a new type of  
6 technology, a new methodology. And like new  
7 methodologies, there was a lot of criticism of  
8 epidemiology Epidemiology is basically  
9 statistics

10 What you do is you go out and you look  
11 at a couple populations and you see there's some  
12 incidents here, there's some incidents here You  
13 count noses and you see which one has more  
14 That's basically epidemiology There's no  
15 laboratory science There's no investigation  
16 It's just a counting exercise And you can  
17 generate lots of statistics from it. And those  
18 statistics can be used in many ways, as I'll  
19 mention in a few minutes.

20 But epidemiology wasn't regarded as a  
21 true science for purposes of establishing a cause  
22 and effect relationship. At least not in the  
23 '50s. There were a lot of people who were  
24 criticizing these epidemiology studies People  
25 like the National Cancer Institute, scientists at

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1 the National Cancer Institute were writing that  
2 epidemiology is good to kind of guide us in ways  
3 to look for further research, but it doesn't make  
4 the whole thing That's not the picture We need  
5 more research We need more evidence We need  
6 more data That's what they were saying

7 Now, people who were writing these  
8 studies were saying we have shown a relationship,  
9 we have shown a link So you had a controversy  
10 developing And in the 1950s this controversy  
11 started out kind of small, but it continued And  
12 the medical and scientific community were  
13 debating, were debating whether or not these  
14 studies can show a relationship or whether or not  
15 you really needed laboratory evidence And  
16 laboratory evidence was conducted

17 What they did was they tried to induce  
18 lung cancer in studies with animals with whole  
19 smoke They used whole smoke, induced it into the  
20 animals, expecting to find cancer If so, that  
21 would give confirmation to some degree to the  
22 epidemiology studies It was a good hypothesis  
23 Epidemiology says that this relationship might be  
24 there, let's check it out in the lab

25 Well, they did NCI did it Other

1 cancer and smoking in this trial through the  
2 evidence  
3 Now, as this controversy continued  
4 through the '50s and up through the '60s, the  
5 Surgeon General became involved. Surgeon General  
6 at the time was a Dr. Luther Terry. And he wanted  
7 to look at the evidence of this controversy He  
8 wanted to look at all the evidence Because there  
9 was more and more of these statistical studies  
10 that did show this association.

11 Now, in 1962 Dr Terry put together a  
12 world class panel of experts to review the  
13 scientific evidence This panel was called the  
14 advisory committee to the Surgeon General And as  
15 a result of their review of all the literature, of  
16 all the controversial literature out there,  
17 reviewing the statistical studies, reviewing the  
18 literature on toxicology, which are the animal  
19 studies, they came to a conclusion, a number of  
20 conclusions

21 They looked at a lot of different issues  
22 of smoking and health and they published them in a  
23 report, the first Surgeon General's report in  
24 1964 It was a very important report because it  
25 was a public health document One of the first

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1 researchers around the country did it And they  
2 couldn't produce any lung cancer Whole smoke  
3 didn't produce lung cancers in animals

4 So then they started scratching their  
5 head and saying, well, we need to look at this  
6 further And the debate went on As more and  
7 more studies in epidemiology came in, the debate  
8 intensified And the studies were reported in  
9 journals and so was the controversy

10 You'll see in this case there will be a  
11 study reported, an author makes a claim, I've  
12 shown a relationship The next month, next year,  
13 next journal says, wait a minute, that's no  
14 relationship at all Even the same authors of  
15 these studies will have retracted their words  
16 after a certain period of time has gone by Some  
17 people will come up and say, I think there's a  
18 relationship Years later they come back and say,  
19 you know that relationship I thought was between  
20 cigarette smoking and lung cancer, I'm not so  
21 sure You'll see that, too, in this trial.

22 In fact, some of the ones that  
23 plaintiffs' counsel had up on the screen there,  
24 we'll see how they retracted some of their  
25 statements about the relationship between lung

1 public health documents that was given the  
2 publicity that these reports were

3 And as a public health document, it was  
4 searching for a way to define scientific terms in  
5 common language And that was one of its  
6 problems Because the debate in the science was,  
7 can a statistical association, which these studies  
8 definitely showed, but can that statistical  
9 association be said to be caused in the absolute  
10 sense, in a scientific sense Do you have enough,  
11 when you have a statistical association, to say,  
12 yes, this is the cause, the absolute cause, the  
13 scientific cause. That's what they were wrestling  
14 with

15 But they also knew that to try to  
16 describe this for the common public is difficult.  
17 Unfortunately, you, for example are going to have  
18 to hear all this description during the course of  
19 this trial because it's an important part of the  
20 trial

21 But the Surgeon General's committee  
22 wrestled with how to define these terms And I'd  
23 just like to read you a couple passages, if I may,  
24 from the Surgeon General's report. They are not  
25 long. First one is from the Forward, written by

1 Dr. Terry himself. Surgeon General, 1964. He  
2 writes, Few medical questions have stirred such  
3 public interest or created more scientific debate  
4 than the tobacco health controversy That's  
5 1964. The debate was continuing up until this  
6 report  
7 He goes on to say, The  
8 interrelationships of smoking and health  
9 undoubtedly are complex The subject does not  
10 lend itself to easy answers But answers they had  
11 to come up with Because it goes on to say,  
12 Nevertheless, it has been increasingly apparent  
13 that answers must be found So what did they do?  
14 How did they resolve this controversy? How did  
15 they resolve this issue?  
16 Well, the first thing they did was they  
17 said, when you look at statistical associations --  
18 and that's what these studies were showing  
19 That's what most of those slides that you were  
20 seeing there, they were statistical associations,  
21 epidemiological associations, statistics  
22 Statistical methods cannot establish proof of a  
23 causal relationship in an association That's  
24 precisely what people were reporting  
25 They were reporting this association

1 based on the statistics And the Surgeon  
2 General's committee says, you cannot establish  
3 proof of a causal relationship in an association  
4 by statistics alone The causal significance of  
5 an association, that's the statistical field, is a  
6 matter of judgment which goes beyond any statement  
7 of statistical probability So they said,  
8 statistical evidence is nice, it's good, it points  
9 the way for further research, but it can't in and  
10 of itself show causation  
11 But they still had the problem of  
12 communicating this to the public And they said  
13 that there were various meanings and conceptions  
14 of the term "cause" were discussed vigorously at a  
15 number of meetings of the committee and  
16 subcommittee. So they debated whether they were  
17 going to use the word cause, not use the word  
18 cause, back and forth  
19 Eventually what they decided was we're  
20 going to use the word cause because it's the one  
21 in general usage in the public. So it's the one  
22 that will convey that there is a significant  
23 effectual relationship between an agent and an  
24 associated disease. So they said, we'll use the  
25 word cause in that context. But they hasten to

1 say, It should be said at once, however, that no  
2 member of this committee used cause -- and they  
3 got it in quotation marks -- in an absolute sense  
4 in the area of this study  
5 So they were saying statistical  
6 association for public health purposes we can use  
7 the word cause, but it's not a scientific cause  
8 It doesn't identify the actual scientific cause.  
9 That awaits proof. It awaits proof today.  
10 We're going to bring a person today into  
11 court this trial to testify to you about what  
12 cancer research is doing today. His testimony  
13 will be on molecular biology. And molecular  
14 biology is something I don't understand I'm not  
15 even going to try to summarize it for you, but I  
16 do think that what his testimony will make clear  
17 is that there's an awful lot that's unknown about  
18 what goes on in the innerworkings of a cell, what  
19 goes on in the DNA, what goes on in the genes of  
20 the cell on a molecular basis that we know very  
21 little about  
22 We only have identified five percent of  
23 the genes in a human cell Ninety-five percent we  
24 don't even know what they do or what they are So  
25 we think, or science believes that genetic events,

1 disruptions, mutations, are the absolute cause,  
2 the scientific cause of cancer, of lung cancer  
3 But we don't know what they are And we certainly  
4 don't know what causes them. What we do have are  
5 statistical associations  
6 Now, the Surgeon General reviewed -- in  
7 addition to lung cancer, it also reviewed issues  
8 with respect to smoking behavior And you heard  
9 in Mr Wilner's description of what he thinks the  
10 evidence will be, you heard some reference to the  
11 fact that the Surgeon General found that cocaine  
12 was not addictive Well, the Surgeon General's  
13 report -- this is the nice thing about evidence  
14 Evidence is what you can see and hear and read.  
15 The Surgeon General's report addressed addiction  
16 in this volume, 1964  
17 Thus is where the Surgeon General came  
18 to the conclusion that smoking was not an  
19 addiction, but a habit And in this volume you'll  
20 have a chance to sit down and read it. Surgeon  
21 General never said that cocaine is not addictive  
22 in 1964. That's not in this report. And you'll  
23 have a chance to check that out for yourself.  
24 What the Surgeon General said, and let  
25 me read it to you, is that the evidence indicates

1 this dependence to be psychogenically of origin.  
2 He's talking about smoking. In medical scientific  
3 terminology the practice should be labeled  
4 habituation to distinguish it clearly from  
5 addiction, since the biological effects of  
6 tobacco, like coffee and other caffeine containing  
7 beverages, are not comparable to those produced by  
8 morphine, alcohol, barbiturates and many other  
9 potent addicting drugs That was the Surgeon  
10 General's report in 1964 That was the conclusion  
11 of this blue ribbon panel

12 There was no debate All right There  
13 was no debate about the definition of addiction  
14 and whether or not smoking was an addiction back  
15 in the 1940s, '50s and '60s, up through the time  
16 that Mr Carter smoked cigarettes That wasn't a  
17 matter of controversy It was controversy over  
18 the lung cancer and smoking relationship, but  
19 there was no controversy over that And that the  
20 evidence will show

21 And why is that? The reason why  
22 addiction could not be properly applied to smoking  
23 during this period was that the definition of  
24 addiction was very, very succinct and complete  
25 You had to satisfy certain criteria to be a drug

1 of addiction And I want to show you, if I can,  
2 just quickly This is from the Surgeon General's  
3 report, like I said, from 1964 It's big enough  
4 for everyone to see, I hope And you see the  
5 first part of this definition says drug addiction,  
6 drug habituation

7 First part says, drug addiction is a  
8 state of periodic or chronic intoxication produced  
9 by the repeated consumption of a drug Habit is a  
10 condition resulting from the repeated consumption  
11 of a drug In other words, coffee -- you drink  
12 coffee every morning It could be considered a  
13 habit You eat chocolate a lot, every day, it  
14 could be considered a habit The habit is a  
15 desire, not a compulsion An addiction is an  
16 overpowering desire or need or compulsion. The  
17 Surgeon General is making a distinction.

18 We'll go through these during the course  
19 of the trial and we'll show how the Surgeon  
20 General went through each one of these factors and  
21 each one of the habit factors and compared what  
22 the effects of smoking were and where did smoking  
23 fall. It fell at the habit. That was the Surgeon  
24 General's conclusion And there was no debate  
25 about that at this time

1 Now, Mr. Wilner talked about some  
2 research, some research that was done, I'm not  
3 exactly sure where, but it was some research  
4 apparently about cortico something or others that  
5 do something or other And I'm not exactly clear  
6 what he said I've never seen this research. It  
7 wasn't part of American Tobacco's research,  
8 certainly And unless this research he's  
9 referring to found that nicotine caused  
10 intoxication, it wouldn't have mattered to the  
11 Surgeon General because you have to have periodic  
12 or chronic intoxication. Smoking cigarettes has  
13 got to make you drunk

14 Smoking cigarettes doesn't make you  
15 drunk and no research is going to conclude  
16 otherwise So it could not fit the definition of  
17 addiction Now, it's true that over time  
18 definitions were changed, definitions were  
19 broadened and over time there was a redefinition  
20 of addiction In fact, it's been redefined many,  
21 many times by many, many people Until where  
22 today it's unclear really what addiction means at  
23 all in the medical sense

24 We're going to hear from an expert in  
25 this case who we'll call at the trial, a Dr John

1 Thompson, who is an expert psychiatrist And he  
2 will address the issue of addiction for you Now,  
3 psychiatry, as you know, is a study of human  
4 behaviors, addictions, dependencies fall within  
5 that field

6 Dr Thompson is the only psychiatrist  
7 who will testify at this trial And he'll tell  
8 you what addiction means today, what it meant  
9 before, what's the differences And he will  
10 discuss that in some detail and he will show you  
11 why it is that the definitions of addiction, when  
12 they are stretched really wide, like some people  
13 would have you do, cover so many behaviors, so  
14 many substances, that it almost becomes  
15 meaningless.

16 Dr. Thompson believes that the better  
17 word is dependency. That's the word that is used  
18 in psychiatric terminology. And dependency as he  
19 describes it only occurs when a person's use of a  
20 substance causes him significant mental distress,  
21 significant mental harm. And that's not just  
22 Dr. Thompson's view or opinion, that is the basic  
23 view of the American Psychiatric Association.

24 That definition does not apply to  
25 Mr Carter when he was smoking Lucky Strikes. He

1 liked smoking Lucky Strikes. He enjoyed it.  
2 Definition of addiction, even today, doesn't apply  
3 to Mr. Carter. Or if it's made and stretched to  
4 apply to Mr Carter, it applies to everybody It  
5 applies to everybody who smokes It applies to  
6 everybody who was a former smoker.

7 According to the 1988 Surgeon General's  
8 report, at that time there were 88 million, excuse  
9 me, there were 40 million smokers 40 million  
10 people were still smoking cigarettes And at the  
11 same time there were 40 million people who had  
12 quit smoking cigarettes 40 million Half and  
13 half

14 Today, in other words, the numbers are a  
15 little different There's more former smokers  
16 than smokers today But even using the 1988  
17 Surgeon General's terms, the 40 million smokers  
18 who under this stretched definition of addiction  
19 would be considered to be addicted to nicotine  
20 quit And 90 percent of those quit without any  
21 medical assistance, without any intervention,  
22 without any aids or without any help So even  
23 under this new, stretched definition, addiction --  
24 one thing is clear -- addiction does not mean you  
25 can't quit if you want to 40 million people are

1 evidence of that And so is Mr Carter He  
2 smoked cigarettes for many, many years, and he  
3 quit And he hasn't had a cigarette in the last  
4 five years

5 Now, getting back to this, the evidence  
6 on the controversy and what is known to America  
7 You'll hear that American Tobacco knew of the  
8 controversy, but you'll also hear that the  
9 American public was made fully aware of this  
10 controversy Remember, I told you before that for  
11 a failure to warn claim, that's the claim that's  
12 being brought by the plaintiffs, they have to show  
13 and prove that the American Tobacco Company knew  
14 something about this smoking and lung cancer that  
15 the public did not know.

16 Well, the public was kept well informed  
17 of the entire controversy. In the '50s smoking  
18 was a very popular habit. Dwight Eisenhower, the  
19 president, smoked. And he inhaled. So it was a  
20 type of thing that was newsworthy It was the  
21 type of thing that would make front page headlines  
22 when a study came out saying, I've got a  
23 relationship, I think I have an association,  
24 smoking and lung cancer are linked. Big news

25 Now, there were criticisms of those

1 studies, as I told you. There were people who  
2 said, let's do more research before we start  
3 making these claims. That's not newsworthy,  
4 that's buried in page ten of the story The story  
5 is the headline, Smoking Linked to Lung Cancer  
6 And you'll see throughout the decade of the '50s,  
7 story after story of smoking and its relationship  
8 to lung cancer, according to this article or  
9 according to this author

10 You don't see much of the other  
11 countervailing evidence The other side of the  
12 debate is not really well represented because  
13 who's going to say, well, we need more research  
14 Who is going to print that, that's not  
15 newsworthy

16 Now, Mr. Carter was exposed to this He  
17 was exposed to these stories in the press In  
18 fact, Mr Carter will tell you that throughout his  
19 life, beginning in the '40s, he used to subscribe  
20 to this magazine, The Reader's Digest And in The  
21 Readers Digest there are a number of articles  
22 throughout the '40s and '50s that are very  
23 antismoking in terms The Reader's Digest, for  
24 all of its existence, has been very against  
25 smoking And they published articles summarizing

1 almost every study that came out negative to  
2 smoking

3 For example, in this one, December 1952,  
4 second article in the journal, Cancer by the  
5 Carton Indictment of Tobacco This is the type  
6 of thing Mr Carter saw This is the type thing  
7 he was reading And the publicity increased And  
8 it increased throughout the '50s And it  
9 increased throughout the '60s until the 1964  
10 Surgeon General's report was issued. And that was  
11 a huge public display, the 1964 Surgeon General's  
12 report.

13 And this is from The Florida Times-Union  
14 newspaper, January 12, 1964 Cigarette Smoking  
15 Held Grave Hazard to Health in U.S This is what  
16 the public was hearing They were hearing what  
17 was being done in the medical and scientific  
18 community This was newsworthy stuff The public  
19 was being told. But Mr Carter had access to  
20 these newspapers. In fact, Mr Carter would tell  
21 you that he did read about this publicity, about  
22 the Surgeon General's report. He read about the  
23 Surgeon General's report and he discussed it with  
24 his colleagues at the FAA, his fellow employees.

25 After '64 the evidence then stopped. It

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1 became more aggressive Once the warnings went on  
2 the packages, there still was more public  
3 denouncement, more public warnings and publicity  
4 on the radio I don't know if you remember the  
5 slogan, I do, you mind very much if they smoke  
6 It's a matter of life and breath Those slogans  
7 were broadcast over the radio Television was  
8 running warnings, spots, telling people the  
9 dangers associated with smoking in the public  
10 health service

11 I want to show you one of those This  
12 is from a cancer society It's of a television  
13 warning that Mr Carter remembered. I mean, even  
14 years after the fact he can remember this  
15 warning This was back in, I guess, 1968 or '69,  
16 something around there And it's a spot that had  
17 the actor on the Perry Mason show -- very popular  
18 show back then Perry mason was a courtroom  
19 drama It's kind of apropos for the situation  
20 But he was always opposed by this one prosecuting  
21 attorney who always lost And the guy's name in  
22 the show was Burton His actual name was  
23 Tallman. And I'd like to show you the spot that  
24 he made I think that you'll probably remember  
25 If I can turn this thing on

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1 (Videotape being played)  
2 MR SHEFFLER That was the type of  
3 warning Mr Carter was getting during the period  
4 that he was smoking Lucky Strikes The type of  
5 warnings that Mr Carter was getting but  
6 disregarded He got warnings, as well, from  
7 people who were very close to him Throughout his  
8 life he was warned by his wife, Mrs Carter, about  
9 the dangers of smoking His son Larry went to  
10 school to become a chiropractor When he would  
11 come home, he'd warn Mr Carter about the dangers  
12 of this habit It got to a point where Mr Carter  
13 didn't just want to hear about it anymore So  
14 Larry, after a while, he quit But Mr. Carter  
15 wasn't interested in learning more about the  
16 dangers He knew full well the dangers  
17 His wife used to cut out newspaper  
18 articles and leave them on his desk Newspaper  
19 articles of the dangers of smoking; the types of  
20 articles that were being published at this time.  
21 She used to leave them on his desk for him to  
22 read, but he didn't. American Tobacco Company  
23 couldn't have told Mr. Carter anything he didn't  
24 already know about smoking and lung cancer at that  
25 time. Not anything that was known to the medical

1 community at least. He knew because it was public  
2 and it was in the media, and you'll hear testimony  
3 about that.

4 Now, there was one -- I have to mention  
5 one thing that Mr Wilner was talking about  
6 earlier about these warnings Again, don't  
7 forget, 1969 that warning, that U.S. government  
8 warning was what had to be on the packages. We  
9 couldn't change them. That was it. But I got the  
10 impression he was trying to suggest that there  
11 should have been other warnings

12 The one time he said that a good  
13 manufacturer would tell its consumers of  
14 everything that's in its product. Well, I'm not  
15 sure that manufacturers in the '60s and '70s or  
16 even today, as with respect to many, many  
17 manufacturers, even know everything that's in  
18 their product.

19 Do you know that there are 4,000  
20 different chemicals in cigarette smoke? 4,000  
21 And that's just now today we have identified 4,000  
22 chemicals in cigarette smoke If we were to put  
23 that on the side of a package, the package would  
24 be too big to put in your pocket I mean, and who  
25 would do anything with that information? I mean,

1 one of the things that Mr Wilner showed you was  
2 this idea about polyaromatic hydrocarbons being in  
3 cigarette smoke and that being a big danger We  
4 should tell people that polyaromatic hydrocarbons  
5 were in cigarette smoke

6 I didn't write them all down. That was  
7 the first one in the list Remember he showed you  
8 that list about the the different things in the  
9 cigarette smoke He said he'd get to it later  
10 First one on there is what I wrote down. But do  
11 you know polyaromatic hydrocarbons are in grilled  
12 hotdogs and charcoaled steak, in almost anything  
13 that you grill Grilled fish has polyaromatic  
14 hydrocarbons It's a natural byproduct of the  
15 process of combustion.

16 Now, certainly Mr. Carter was not going  
17 to make his decision about whether he was going to  
18 smoke or not on the basis of whether or not there  
19 were polyaromatic hydrocarbons in cigarette  
20 smoke. He was going to make it on the basis of  
21 what was important to him. And what was important  
22 to him was, what is the disease process that's  
23 associated with smoking. He knew about them. He  
24 knew that lung cancer was associated with  
25 smoking. He saw the Tallman video. He saw lots



1 of material like this during his lifetime.  
2 We'll talk about some of that, but I  
3 want to turn for a minute to the medical issues.  
4 And I won't spend a lot of time on this because,  
5 I'll be honest with you, it would be better coming  
6 from the witness than coming from me. Somebody  
7 who knows it well and can explain it well. But  
8 there's a couple things I would like to say.

9 First of all, this evidence about  
10 statistics and statistical evidence and this  
11 epidemiology evidence, remember when you hear  
12 statistics that there's a lot of ways to interpret  
13 them. I mean, it is a statistic that ten percent  
14 of smokers will develop lung cancer. That is a  
15 statistic and it is out there. And there are  
16 studies that suggest that. But turn that  
17 statistic around and what it says is, 90 percent  
18 of smokers will not develop lung cancer. A  
19 statistic also out there is ten percent of lung  
20 cancer occurs in nonsmokers. That's also out  
21 there. And you can apply statistics to other  
22 behaviors.

23 Now, Mr. Wilner went through a bunch of  
24 statistics and said, look at smoking compared to  
25 getting struck by lightning or getting blown up in

1 a nuclear power plant or falling off a  
2 motorcycle. The point about statistics is that  
3 it's like in the eye of the beholder. Okay.  
4 There are statistics that you can generate up  
5 about smoking that sound awesome, but you can  
6 generate those same statistics about dying. You  
7 can generate those same statistics about being 10  
8 to 12 pounds overweight. Those same statistics

9 Early mortality that Mr. Wilner was  
10 talking about. You can look at being 10 to 12  
11 pounds overweight and find the same statistics.  
12 Statistics are statistics.

13 If you add up all the different  
14 statistics, all the different percentages that are  
15 attributable causes of lung cancer; for example,  
16 you know that smoking has a statistic and there's  
17 a certain percentage attributable to smoking.  
18 There's a certain percentage of lung cancer  
19 attributable to Radon. You know, Radon, the gas  
20 that comes up from the basements and the cellars  
21 of homes and houses. Radon gas. Certain  
22 percentage of lung cancer is attributable to  
23 that. There's a certain percentage of lung cancer  
24 is attributable to occupation, to jobs, where you  
25 work. Certain percentage is attributable to

1 living in certain hot spots of the country.  
2 There are areas in the country — and  
3 nobody knows why — cancer is more prevalent. And  
4 lung cancer is more prevalent. Duval County is  
5 one of those areas. You can plot it on a map and  
6 you can see where the National Cancer Institute  
7 has identified certain points, certain points in  
8 the country that are cancer hot spots. Duval  
9 County is a cancer hot spot for lung cancer. And  
10 you'll hear that evidence in this trial.

11 But, anyway, there's a certain  
12 percentage of lung cancer due to hot spots.  
13 There's a certain percentage due to high-fat  
14 diets. It's true. High-fat diets have been  
15 associated statistically the same way smoking has  
16 been associated statistically with an increased  
17 rate of lung cancer. And a certain percentage of  
18 lung cancers are attributable to prior lung  
19 diseases, like severe infections, like pleurisy.  
20 It causes scarring of the lungs. And a certain  
21 percentage of lung cancer is attributable to  
22 that. And then there's others. I mean, air  
23 pollution, there's a certain percentage attributed  
24 to air pollution. It's small. It's not like  
25 these others. But there are a lot of other

1 factors out there that have a percentage  
2 statistically associated.

3 If you add up all those percentages, you  
4 get to way over 100 percent. And why is that?  
5 Because it's statistics. And that's just what  
6 statistics do, statisticians do.

7 But there is one statistic that I would  
8 like to mention to you that you will hear  
9 testimony about in this trial, and it's  
10 important. And that statistic deals with  
11 declining risk upon smoking cessation. One of the  
12 warnings in the '85 amendment to warnings is,  
13 Quitting now greatly reduces your chances — well,  
14 quitting now greatly reduces your risk of health  
15 hazards from smoking.

16 And it's based upon the same statistical  
17 evidence that Mr. Wilner was telling you  
18 implicated smoking. Those same studies that  
19 showed the dose-response and everything else he  
20 was talking about, those statistical studies,  
21 those same statistical studies show that when a  
22 person quits smoking, after 10 to 15 years his  
23 risk of lung cancer is like that of someone who  
24 never smoked.

25 Now, Mr. Carter smoked Lucky Strikes up

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1 until 1973 If he had quit in 1973, 10 to 15  
2 years later, 1983 to 1988, his risk would have  
3 been that of a nonsmoker But he didn't quit. He  
4 quit smoking Lucky Strikes. He changed brands.  
5 Brands that are not in this case Mr Carter knew  
6 about the declining risks when you quit smoking  
7 cigarettes. His son Larry told him about it, as  
8 well as he saw it on the cigarette packages in the  
9 1980s

10 Now, this is not to say that Mr Carter  
11 is a statistic And I wouldn't do that He's not  
12 a statistic And you can't use statistics to  
13 diagnose a disease You can't use statistics to  
14 come to a conclusion of a cause in an individual  
15 Statistics don't work that way They apply to  
16 huge groups of people Mr Carter is an  
17 individual Mr Carter had a specific type of  
18 lung cancer And Mr. Carter's type of lung cancer  
19 was a bit unusual. It was unusual for a number of  
20 reasons.

21 First of all, I don't know if you  
22 recall, you remember the ciliated cells in that  
23 slide that was shown to you earlier You had the  
24 big columns of ciliated cells Well, those  
25 cells -- and then I think Mr Wilner went on to

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1 say, those cells in a smoker become flattened and  
2 then they become cancerous Remember he said  
3 something like that Well, the point of all that  
4 is, it's thought that smoking-related cancers, or  
5 those cancers associated with smoking, occur in  
6 the area where those ciliated cells are Okay  
7 Those cells with little hairs on top Those  
8 ciliated cells exist in the main air tubes of the  
9 lung, and only there In the main -- they call  
10 them bronchi, but they are the main air tubes in  
11 the lung

12 Now, as the lung goes out, you know, you  
13 got your windpipe, it comes down and branches off  
14 and goes to each lung Then it keeps branching  
15 It's like a tree. And it just keeps getting  
16 smaller and smaller and smaller and it goes way  
17 out there And eventually it gets into these  
18 little tiny air sacs where the air is exchanged  
19 with the blood.

20 This will all be explained to you.  
21 We're going to have a witness here who will  
22 explain in detail the anatomy of the lung and show  
23 you how this happens.

24 Now, most smoking-related cancers, it's  
25 believed that they occur in the main bronchi, the

1 first few branches And they arise from those  
2 lining cells Mr. Carter's cancer, though, did  
3 not start there It started in the periphery of  
4 the lung And it was very unusual because of  
5 that.

6 And the testimony that you'll hear to  
7 establish that Mr Carter's lung cancer was a  
8 peripheral lung cancer comes from Dr Gamba.  
9 Dr Gamba is a radiologist, is a Board-certified  
10 radiologist. He practices at Baptist Hospital  
11 He reads x-rays every day That's what he does  
12 for a living. He will come in here and he will go  
13 through Mr. Carter's chest x-rays with you And  
14 he will show you on the films of Mr Carter why it  
15 is that his lung cancer was in the periphery of  
16 the lung, not in the main airways

17 And you will also hear from another  
18 doctor in this case by the name of Dr Gary Pearl,  
19 a Board-certified pathologist Now, a pathologist  
20 is the doctor that looks at the tissue, the cells  
21 of cancer or healthy tissue or diseased tissue, he  
22 looks at it under a microscope And looking  
23 through the microscope he's able to see the  
24 individual cells and he comes to a diagnosis of  
25 the disease process That's what pathologists

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1 do And Dr Pearl will tell you that when he  
2 looked at the cells of Mr Carter, he found that  
3 he had a specific type of lung cancer called  
4 adenocarcinoma And you'll hear that term a lot  
5 in the course of the trial

6 Adenocarcinoma is the type of lung  
7 cancer that occurs most frequently in nonsmokers  
8 Adenocarcinoma in the periphery, that's putting  
9 those two together, a peripheral adenocarcinoma --  
10 I told you this gets technical, but bear with me  
11 A peripheral adenocarcinoma is not associated with  
12 smoking It's associated with scarring

13 Remember, I told you before there's  
14 certain previous infections that can cause scars  
15 And those scars are associated with cancers. And  
16 peripheral adenocarcinoma is associated with  
17 scarring Now, did Mr. Carter have previous lung  
18 infections? Well, he had a couple bouts of  
19 pleurisy.

20 Also, adenocarcinoma of the lung is the  
21 one that's most associated with high-fat diets.  
22 Excuse me Mr. Carter, throughout his adult life,  
23 had problems with high cholesterol He had a  
24 high-fat diet. He was recommended to go on a  
25 low-fat diet a number of times, but as the

1 evidence will show he wasn't quite good at  
2 following his low-fat diet. So he came on and  
3 off. And when the chocolate chip cookies came,  
4 were passed around, he kind of put the idea of a  
5 diet away for a while We'll talk about that in a  
6 minute

7 But, in any event, the proof will show  
8 that Mr. Carter did have a peripheral  
9 adenocarcinoma associated with scars, but not  
10 associated with smoking The proof will also  
11 show -- and thus will come from the molecular  
12 biologist I told you we're bringing He will talk  
13 to you about carcinogenesis That's his  
14 specialty, cancer research

15 He'll tell you where that research is  
16 today He'll tell you the millions of dollars  
17 that's being spent by the NCI, American Cancer  
18 Society and all kinds of people trying to  
19 research the molecular basis of cancer. He'll  
20 also tell you that we don't know a lot about the  
21 molecular basis of lung cancer We know very  
22 little We don't know what it is What mutation  
23 is necessary to cause a cell to become cancerous  
24 We don't know that

25 He'll tell you that there's been some

1 researchers who have suggested that a couple  
2 mutations that have been identified are commonly  
3 found in the cancers of those people who have  
4 cancer associated with smoking Two mutations  
5 And he'll tell you that he looked to see -- he did  
6 the test necessary to look at the molecular  
7 genetic material in Mr. Carter's cancer to see if  
8 those mutations existed And when he looked, he  
9 found they didn't exist. They were not there. I  
10 think the proof will show, Ladies and Gentlemen of  
11 the Jury, that there is no association between the  
12 specific type of lung cancer that Mr. Carter had,  
13 this peripheral adenocarcinoma, and his smoking of  
14 Lucky Strike cigarettes.

15 Now, there is another type of evidence  
16 that I want to go over with you briefly I know  
17 it's late in the day. Bear with me and I'll try  
18 to summarize it as much as I can. You will hear  
19 this evidence during the trial, though. And I do  
20 think it's incumbent upon me to give you some  
21 preview of what you're going to be hearing.

22 Third type of evidence deals with  
23 Mr. Carter himself. His decisions Why he  
24 smoked, why he quit in '91, why he didn't quit  
25 before. And a lot of this evidence comes from

1 Mr. Carter and Mrs. Carter.

2 We were able to ask them some questions  
3 before trial in what's called a deposition. And  
4 they told us about some of Mr. Carter's smoking  
5 behavior, some of his knowledge about smoking and  
6 its risks. During the course of the trial you'll  
7 hear some of that testimony And I believe you'll  
8 hear Mr. Carter and Mrs. Carter both testify as  
9 well

10 Mr. Carter as a young boy lived on a  
11 tobacco farm He harvested tobacco, he cured it  
12 and he got it ready for sale As a young man  
13 he -- his family moved to Jacksonville and he  
14 became a part of the family business which was  
15 selling cigarettes And he sold cigarettes and he  
16 was around cigarettes

17 So Mr. Carter, you know, tobacco and  
18 cigarettes were not something foreign to him He  
19 started smoking at age 17 to be one of the crowd,  
20 at least that was his testimony. And he continued  
21 smoking And he smoked Lucky Strikes because he  
22 liked them He said he liked the taste He  
23 preferred Luckys He liked drinking -- he liked  
24 to have a Lucky Strike when he had a cup of coffee  
25 in the morning

1 He used Lucky Strike cigarettes and  
2 smoking as a reward It's like the time he told  
3 us he was -- or Mr. Carter was part of the FAA and  
4 he was an air traffic controller A stressful job  
5 some people would find, but he found it to be  
6 challenging. He found the stress to be enjoyable  
7 He enjoyed his job He loved it

8 He told us one time that he had to guide  
9 35 airplanes through a thunder storm and land  
10 them all safely. And he accomplished that feat  
11 and he was very proud of it. And after it was  
12 done, he leaned back in his chair, and to  
13 celebrate he lit himself up a Lucky Strike and  
14 smoked it because he liked it. It was a reward  
15 He enjoyed smoking.

16 Now, we talked a little bit about  
17 addiction. And I told you Dr. Thompson -- we'll  
18 talk about that. But addiction is really not the  
19 issue. It's not really the issue in this trial.  
20 Addiction, dependency, habit, you can call it  
21 whatever you want. The question is, what  
22 distinguishes between people who quit smoking and  
23 people who don't quit smoking. What is the thing  
24 that distinguishes between those two

25 It's not the addiction label because

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1 that label applies to all smokers, the 40 million  
2 who smoke and the 40 million who quit. Or it  
3 applies to no smokers. So it's not the label of  
4 addiction that we're really concerned about here.  
5 What is it that distinguishes between people who  
6 quit smoking and people who don't.

7 Dr. Thompson will tell you, maybe it's  
8 self-evident common sense, but nevertheless it's  
9 true, the one thing that distinguishes between  
10 people who quit and people who don't is  
11 motivation. The people who quit smoking are the  
12 ones who truly are motivated to quit.

13 It was put very well by this doctor down  
14 here in Florida, Carolyn Schleder, Director of  
15 Smoking Cessation Program. And this is published  
16 in the Journal of the Florida Medical  
17 Association. And what she said is, Motivation is  
18 the key. The person has to want to quit more than  
19 he or she wants to continue. I don't know how  
20 much they paid her to come to that conclusion in  
21 terms of research grants or how much research it  
22 took, but I do know that it's pretty self-evident  
23 common sense that a person who doesn't want to  
24 quit smoking or doesn't truly want to make the  
25 effort to quit will not do so, and a person who is

1 Mr. Carter, that would have persuaded him to  
2 quit?

3 I think I tried some of everything in  
4 the world that I could think of that I thought  
5 would even remotely change his mind or maybe get  
6 him to try one more time or, if you want to put it  
7 that way, a serious effort, but nothing worked.

8 So you don't know of anything?

9 I don't know of a thing.

10 Now, if Mrs. Carter couldn't persuade  
11 her husband to quit smoking, she couldn't motivate  
12 him to quit smoking, what could The American  
13 Tobacco Company have said that would have  
14 motivated him to quit smoking during the time he  
15 was smoking Lucky Strikes?

16 Mr. Carter told us himself about some of  
17 his motivation to quit. And every once in a while  
18 he would make an attempt to quit when he was  
19 pushed by his wife, or when his friends told him,  
20 let's do it on a dare, or when some new gizmo came  
21 on the market. You know, stop smoking with these  
22 kind of fancy filters type of thing. He'd buy it,  
23 he'd try it, he'd maybe quit for a week or so, but  
24 then he went back. And why? Because he didn't  
25 really want to quit.

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1 truly motivated will. And that's the issue in  
2 this trial.

3 What was it that was going to motivate  
4 Mr. Carter to quit smoking? The plaintiffs say it  
5 was a warning. Plaintiffs say that a warning by  
6 The American Tobacco Company would have done it.  
7 That would have been enough to motivate him to  
8 quit. They have to say that for their claim to  
9 succeed. But the proof will show that Mr. Carter  
10 knew well the risks of smoking and it didn't do  
11 anything in terms of changing his motivation.

12 There was an occasion when Mrs. Carter  
13 was asked about her discussions with Mr. Carter to  
14 try to motivate him. She was asked, what did you  
15 do, because she was concerned. She was very  
16 concerned about his smoking. And she was asked,  
17 what did you do. And I want to show you testimony  
18 she gave, because I think it's very explanatory of  
19 this whole motivation question.

20 This is at her deposition that we took  
21 before trial. This is part of the testimony that  
22 you will hear. And it's Mildred Carter. It's  
23 Mr. Carter's wife.

24 The question is asked, Do you know of  
25 anything that you could have done or showed Grady,

1 When the FAA, where Mr. Carter was the  
2 manager, instituted a smoking cessation clinic,  
3 it's a free clinic, it's for all the employees at  
4 the FAA, he didn't go. He set it up. He allowed  
5 it to be, have the facilities to run the clinic,  
6 but he didn't go. When he was asked why, he  
7 simply said, Because I didn't want to quit. He  
8 did not want to quit smoking. It wasn't that he  
9 was addicted. It wasn't that the label addiction  
10 prevented him from quitting. He didn't want to.  
11 He wasn't motivated.

12 There was an annual Smoke Out that  
13 occurred. You've probably -- well, there's a  
14 Great American Smoke Out that the American Cancer  
15 Society runs every year. People are supposed to  
16 stop smoking, if you're a smoker, for a day. And  
17 it's something that Mrs. Carter wanted Grady to  
18 try to do.

19 Mr. Carter was asked about that in his  
20 deposition. Here's the testimony of Mr. Carter.

21 Okay. So from 1983 to 1991 you never  
22 participated in the Great American Smoke Out;  
23 right?

24 That is correct.

25 You know it's an annual event; right?

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1 Yes.  
2 And the reason you never participated in  
3 it is because you didn't want to stop smoking;  
4 right?  
5 That's correct.  
6 He didn't want to stop He wasn't  
7 motivated to stop.  
8 Mr. Carter was advised by his physicians  
9 to stop smoking and they also advised that because  
10 of his high cholesterol to go on this low  
11 cholesterol/fat diet. And from time to time he  
12 did diet But from time to time he didn't And  
13 the times he didn't were more, much more than the  
14 times he did. He knew that he was at risk because  
15 of his high cholesterol for heart disease, heart  
16 attacks, and the like He knew that But he  
17 couldn't keep on his diet And why is that?  
18 Because he wasn't motivated Was he addicted or  
19 is he addicted to fatty foods? According to some  
20 definitions maybe he is But is that why he  
21 didn't -- he can't stay on a low-fat diet? It's  
22 because he's not motivated  
23 Now, Dr Thompson will explain to you  
24 that the reason why Mr Carter quit in 1991 and  
25 didn't quit before was because Mr Carter was

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1 using, before that time, a common psychological  
2 tool A tool that we all use when we're faced  
3 with risky behaviors that we want to engage in  
4 Some people like to ride motorcycles  
5 That's risky. But they convince themselves, it's  
6 not going to happen to me I'm not going to get  
7 in the accident Some people have  
8 hypercholesterol and it's risky not to keep on  
9 your low-cholesterol diet, but you rationalize  
10 that by saying, it's not going to happen to me  
11 I'll take care of that diet tomorrow. I'm going  
12 to be okay. It's going to be the other guy. This  
13 is a common thing we do all the time  
14 Mr. Carter applied that same  
15 psychological tool to his smoking throughout his  
16 life. And especially in the time he smoked Lucky  
17 Strikes. He said it wasn't going to be me. It's  
18 not going to happen to me. It's going to be  
19 somebody else And I think the rationalization  
20 that Mr. Carter used is best explained in the  
21 deposition testimony of Mrs. Carter again.  
22 Again, this is the deposition of  
23 Mrs. Carter that you will hear during the trial of  
24 this case.  
25 Now, did Grady acknowledge to you in

1 these discussions that he knew that he should quit  
2 smoking not just because of his promise to you,  
3 but because of his health.  
4 The answer: I don't really believe that  
5 it was anything that he would say based on health  
6 as much as it was that he knew that he had made a  
7 promise to me and he knew how much it bothered me  
8 for him to do that. And so I don't really think  
9 that he thought about it healthwise a whole lot  
10 because he, again, was one of those people who  
11 thought I can do this and nothing bad is going to  
12 happen to me It's always somebody else  
13 Mrs Carter, as well, knows Mr Carter,  
14 perhaps, better than anyone else And that was  
15 her opinion of what Mr Carter was doing and why  
16 it was, with this health information, with all the  
17 news articles she was cutting out and leaving for  
18 him, with the warnings from his son, his doctors,  
19 with all of the video warnings, all of the TV  
20 warnings, all the information in the newspapers,  
21 all of this information about health and smoking  
22 he disregarded The reason was he rationalized  
23 it He rationalized it away It's going to  
24 happen to somebody else And it worked It  
25 worked until February or the end of January of

1 1991  
2 At that time Mr Carter realized --  
3 believed he had lung cancer He was coughing up  
4 blood He looked up in the book the symptoms of  
5 lung cancer He convinced himself he did have,  
6 indeed, lung cancer And he stopped smoking And  
7 he's never had a cigarette since. Why? The  
8 rationalizations won't work. It was too real  
9 The motivation is high  
10 It's the same way for the person who  
11 rationalizes away his failure to stay on a low-fat  
12 diet. I'll diet tomorrow. It's okay It's not  
13 going to happen to me. First time he gets the  
14 signs of a heart attack or, worse yet, if he  
15 actually experiences one and survives his  
16 motivation is high. His motivation will be very  
17 high to stop. And at that time he will go back on  
18 his diet.  
19 Now, Mr. Carter, as I told you, became  
20 truly motivated to quit when he believed he had  
21 lung cancer. And that is why he's quit and that  
22 is why he's remained abstainative from smoking  
23 until today.  
24 The date that he came to that  
25 realization or the date he came to that belief is

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1 a very important date for the purpose of the  
2 trial. You've heard a couple references to it  
3 already And the testimony on this date is  
4 important. It's not the date of diagnosis.  
5 There's nowhere in the statute of limitations law  
6 that says date of diagnosis is a triggering  
7 event That's not in the law The law says when  
8 the person who is injured knows or reasonably  
9 believes he was injured He's got four years to  
10 bring his claim If he doesn't bring his claim  
11 before the four years has run, he can't bring it  
12 That's the Florida legislature That's not the  
13 rule of Judge Davis, not the rule of the lawyers  
14 That's the Florida legislature If you don't  
15 bring your claim within four years after you know  
16 you were injured, you can't bring it

17 Mr Carter believed -- he realized he  
18 was injured He thought he had lung cancer He  
19 believed it He quit smoking as a result of it on  
20 or before February 5, 1991

21 After that he thought about suing, he  
22 thought about bringing a lawsuit, but he didn't  
23 until he saw an advertisement in the newspaper  
24 that was put out to get plaintiffs to come -- to  
25 get people to come in to sue tobacco companies

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1 That's after Mr Carter saw that ad, he called up  
2 the firm Mr Wilner is with and his case was filed  
3 immediately, thereafter Unfortunately, by that  
4 time it was February 10, 1995, well after four  
5 years from the time Mr Carter realized and knew  
6 he had lung cancer

7 In sum, I believe the evidence will show  
8 in this case that although Mr Carter was well  
9 aware of the risk of smoking, he did not quit  
10 smoking until 1991 because he was not motivated to  
11 do so And there was nothing that The American  
12 Tobacco Company could have said There was  
13 nothing that anyone could have said that would  
14 have changed his motivation until 1991.

15 Now, Mr Wilner said that it was, it  
16 was -- there was no claim in this case that  
17 American, Brown & Williamson is blaming Mr Carter  
18 for his actions. That's actually -- that's  
19 absolutely correct Of the many things he said,  
20 that is absolutely correct. There is no claim by  
21 American Tobacco, Brown & Williamson Tobacco that  
22 Mr. Carter did anything wrong by smoking  
23 cigarettes. Mr. Carter made a choice.

24 He made a choice to disregard the advice  
25 of his doctors when they told him to go on the

1 low-fat diet. He made a decision to disregard the  
2 advice of his doctors when they told him to quit  
3 smoking. And that was his choice. That was his  
4 decision. In America we have the right to make  
5 such decisions. Cigarettes are legal products and  
6 they are legally manufactured. They are -- they  
7 do carry the package warnings in compliance with  
8 the US Congress's law and they are legally sold  
9 in all 50 states

10 Now, some of us may disagree with  
11 Mr Carter's decision to smoke cigarettes knowing  
12 what he knew, but that was Mr. Carter's decision.  
13 And it was Mr Carter's right to make that  
14 decision and we must all respect it.

15 Thank you very much for your patience  
16 It's late in the afternoon I apologize I think  
17 I did keep my promise to be shorter than  
18 Mr Wilner, probably longer than you wanted, but  
19 you will hear a great deal of evidence in this  
20 trial It is extraordinarily important to all of  
21 us We all take this very seriously, as I'm sure  
22 that you do, too And I deeply thank you for your  
23 attention and I thank you for the attention you're  
24 going to give to the evidence in this case and to  
25 the care you will give to your deliberations in

1 this matter Thank you very much  
2 THE COURT Ladies and Gentlemen,  
3 there's some matters I need to take up outside of  
4 your presence with the attorneys before you leave  
5 today, so I'm going to ask you to retire to the  
6 jury room for just a moment, if you would,  
7 please

8 (Jury absent)  
9 THE BAILIFF All secure, Your Honor  
10 THE COURT I'm sorry?  
11 THE BAILIFF Secure  
12 THE COURT All right Please be  
13 seated

14 Do they have a verdict? Is that a  
15 verdict? Didn't they ring the buzzer?  
16 THE CLERK. I think somebody leaned on  
17 it.

18 THE COURT Let me see counsel without  
19 the reporter at side bar.

20 (Side bar, Court and counsel)

21 THE COURT. Gentlemen, you-all will  
22 return to counsel table.

23 MR. PRICHARD Sorry

24 MR MAXWELL Sorry. I forgot we didn't  
25 need to do this at side bar.

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1 THE COURT Right. The jury is out. It  
2 came to my attention before opening statements,  
3 and I shared this with counsel for both parties,  
4 that juror number seven, Mr. Richard Prisock,  
5 expressed concern to Mr Ford, our bailiff, during  
6 one of the recesses that the trial and its length  
7 was likely to work an economic hardship and that  
8 he could not afford to be here and that it was a  
9 problem for him I understand now that with that  
10 information counsel for plaintiff and perhaps  
11 counsel for defendant want to be heard

12 MR MAXWELL Yes, Your Honor. The  
13 plaintiffs would move to dismiss juror number  
14 seven, or Mr Prisock, from the panel Our  
15 concern is that he was specifically asked  
16 questions about potential hardship in the case and  
17 did not indicate that he had any hardship The  
18 fact that he is now making comments about hardship  
19 gives me concern that perhaps his responses to our  
20 other inquiries may not have been as direct or as  
21 forthcoming or as candid as we needed him to be  
22 with us

23 As an additional ground that is  
24 unrelated to this, I have noticed today during  
25 opening statements that Mr. Prisock was napping

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1 during both the statement given by plaintiffs and  
2 the statement given by defendant, and that I would  
3 move on those grounds as well

4 MR PRICHARD Your Honor, my first  
5 request would be that this motion -- the sensitive  
6 matter of a juror be conducted in camera, if the  
7 Court would permit

8 MR MAXWELL No objection to that, Your  
9 Honor

10 THE COURT All right Then you mean  
11 the argument in its entirety or --

12 MR PRICHARD No, sir, with respect to  
13 this juror and Your Honor's contemplating further  
14 inquiry of Mr Prisock, for example

15 THE COURT Oh, okay.

16 MR. PRICHARD If all you're looking for  
17 now is if we're objecting to his exclusion or not,  
18 I can give you that.

19 THE COURT All right. I'd like to hear  
20 your position on that, first of all.

21 MR. PRICHARD Yes, Your Honor. First  
22 of all, we would object to removing Mr Prisock  
23 from the jury that was only struck this morning  
24 just before noon after a day and a half of inquiry  
25 by counsel for both sides. I'm not sure of the

1 tenure or the nature of the severity of the  
2 comment to Mr Ford, the bailiff. Certainly  
3 anybody who has a job who has to sit here for two  
4 weeks would probably suffer some deprivation or  
5 some hardship He was asked these questions, he  
6 did not bring it up at the time that he was  
7 quizzed by Mr. Maxwell, nor while he was quizzed  
8 generically by myself So I'm not sure if we're  
9 not making a lot out of nothing here with  
10 Mr Prisock The jury has been struck, the  
11 composition is set and I feel it should remain  
12 that way unless further it's demonstrated

13 Secondly, with respect to Mr Maxwell's  
14 observation of Mr Prisock during the opening  
15 arguments of counsel, I missed the sleeping part  
16 during Mr Wilner's opening, but I did see  
17 Mr Prisock nodding, smiling in reaction to  
18 comments made by both counsel that he was paying  
19 attention All the jurors at one time or another  
20 that I saw, their eyes would close momentarily  
21 It's late in the day It's hot in this courtroom  
22 and it's after lunch But I didn't see any overt  
23 sleeping like I've seen in other cases that I've  
24 been involved in in this courtroom

25 So I don't doubt Mr Maxwell saw him

1 nodding I don't doubt that everybody was nodding  
2 at one time here or another But to disqualify a  
3 juror --

4 THE COURT I was not nodding The  
5 record should reflect that

6 MR PRICHARD Absolutely, Your Honor  
7 And I retract that at risk of great harm to  
8 myself, Judge I must say, I was a little bit.  
9 But, in any event, Judge, if we start  
10 disqualifying jurors because they close their eyes  
11 a few minutes, we're never going to get a jury to  
12 render a decision in any case.

13 THE COURT Let me know the purpose of  
14 the in camera inquiry I am going to talk with  
15 Mr. Prisock I don't think the record is clear  
16 sufficiently for me to rule on whether or not this  
17 hardship is such that he should be excused And I  
18 do think it's an important question. But why, why  
19 in camera? Is it because you want to avoid the  
20 embarrassment to him of being brought out here by  
21 himself?

22 MR. PRICHARD Absolutely, Your Honor  
23 I think that would work.

24 MR. MAXWELL. Yes, Your Honor.

25 MR PRICHARD Agree with that?

1 MR. MAXWELL Yes  
 2 MR. PRICHARD I'd like to have --  
 3 doesn't have to be in camera with Mr Ford to  
 4 perhaps hear from his mouth as best he can his  
 5 recollection of Mr Prisock's comments That  
 6 might cure it  
 7 THE COURT All right Let me do this.  
 8 I'm going to ask Mr Prisock to remain for a  
 9 moment We'll probably adjourn to chambers and  
 10 perhaps I'll give both of you an opportunity to  
 11 talk with Mr Ford and Mr Prisock at that time  
 12 With regard to tomorrow, is 9 00 a m a  
 13 satisfactory time to begin?  
 14 MR MAXWELL Yes, Your Honor  
 15 MR WILNER Yes, Your Honor  
 16 MR PRICHARD Yes, Your Honor.  
 17 THE COURT Okay Is there anything  
 18 else that I need to take up before I excuse the  
 19 balance of the jurors?  
 20 MR MAXWELL Your Honor, would you like  
 21 to take up the issues of the objections that we  
 22 need to complete today or tomorrow morning?  
 23 THE COURT Perhaps in chambers As I  
 24 recall, your estimate was --  
 25 MR MAXWELL Very brief

1 morning So with that, if you'd tender your  
 2 badges.  
 3 They do turn the badges over to you;  
 4 don't they, Mr Ford? To Mr. Ford. I hope you  
 5 have a restful evening  
 6 Mr. Prisock, I need for you to remain  
 7 for just a moment I need to take up a matter  
 8 with you, if you could  
 9 MR PRISOCK. Yes, sir.  
 10 THE COURT Okay  
 11 THE BAILIFF All of you except  
 12 Mr Prisock are free to go out. I have the  
 13 badges  
 14 THE COURT Mr Ford, if you could,  
 15 please escort Mr Prisock to my chambers and the  
 16 attorneys are going to meet me around there in  
 17 just a moment I need you-all to remain for just  
 18 a minute before you leave, though  
 19 I'd like to get your input, gentlemen,  
 20 along with Mr Croll, about placement of that  
 21 camera tomorrow  
 22 MR WILNER I don't think it will be in  
 23 the way there I mean, I guess -- I don't think  
 24 that will particularly interfere with anything I  
 25 have to do

1 THE COURT -- it would be ten or so  
 2 minutes  
 3 MR WILNER Your Honor, we just have a  
 4 short housekeeping matter Any x-rays that are  
 5 Mr Carter's, you make sure you have them in the  
 6 morning here, if you have them  
 7 MR SHEFFLER We have them What  
 8 x-rays do you need?  
 9 MR. WILNER I need Mr Carter's x-rays  
 10 MR SHEFFLER All of them? The whole  
 11 set?  
 12 MR WILNER Yeah, just want to make  
 13 sure for housekeeping, if you have them  
 14 MR. SHEFFLER Yes  
 15 MR. WILNER. Okay.  
 16 THE COURT With that, would you bring  
 17 the jurors back in, Mr. Ford.  
 18 (Jury present)  
 19 THE COURT Ladies and Gentlemen, you  
 20 don't need to take the box I'm about to excuse  
 21 you. I just wanted to let you know a time that  
 22 we'll be returning tomorrow, which will be nine  
 23 a.m. I hope that you will collect yourselves in  
 24 the jury room a little bit before that with the  
 25 hope that we can get started on time tomorrow

1 MR PRICHARD He's talking about  
 2 shooting the witnesses tomorrow; right? I mean --  
 3 MR WILNER Whether he should? Yeah  
 4 I don't have a position, Your Honor Hasn't  
 5 bothered me so far and I just don't have a  
 6 position one way or the other  
 7 MR PRICHARD Maybe I misunderstood.  
 8 Was it your intention to move the camera to a  
 9 different location so you could look --  
 10 MR CROLL Perhaps I may not be here  
 11 tomorrow, so I really don't know. But just making  
 12 an assumption, if it were myself, I would  
 13 certainly move the camera to the other end of the  
 14 courtroom because if there are witnesses to be  
 15 heard, I would want to be pointing this direction  
 16 THE COURT Well, actually, I think that  
 17 that position, as far as witness testimony is  
 18 concerned, is distracting. It is too close to the  
 19 witness.  
 20 MR. WILNER. Maybe so.  
 21 THE COURT So my suggestion would be  
 22 somewhere behind the bar, actually.  
 23 MR. CROLL well, I think that would  
 24 probably work just fine for either myself or  
 25 whomever would be doing it.



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1 MR WILNER. Fine. Be fine with us,  
2 Your Honor.  
3 MR. PRICHARD We have the same problem,  
4 Your Honor. If he's back over here, he's shooting  
5 across the whole courtroom, can't see the  
6 witness. If he's back over there, he's panning  
7 the jury, even though he's got a focus situation.  
8 I mean, if he can demonstrate that he can get in a  
9 position where he can see it and it doesn't  
10 interfere with Your Honor's orders, I've got no  
11 problem with him being in the back  
12 THE COURT Well, who is going to be  
13 here tomorrow, Mr Croll?  
14 MR CROLL I don't know  
15 THE COURT Someone from your company?  
16 MR CROLL It may be myself or they are  
17 possibly contracting with another company to get a  
18 satellite truck in to go live with this  
19 THE COURT Well, we're going to start  
20 court at 9 00. And if the placement of the camera  
21 has not been approved by me by then, it will not  
22 be permitted. You need to communicate that to  
23 whomever you're in touch with  
24 MR CROLL By what time? Sorry, Your  
25 Honor

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1 THE COURT We're starting court at  
2 9 00. If the placement of the camera is not  
3 approved by me before then, it will not be  
4 permitted, all right?  
5 MR CROLL Yes  
6 THE COURT Anything else, gentlemen?  
7 MR CROLL Excuse me  
8 THE COURT Mr Croll, you've got a  
9 question?  
10 MR CROLL Excuse me just for a  
11 moment. What are the parameters that the  
12 gentlemen require in order to --  
13 THE COURT Well, I'm not going to  
14 permit you to have the camera where it is  
15 tomorrow. You can't tell me where you wish to  
16 have it placed tomorrow. It needs to be approved  
17 before it's placed. If it's not approved before  
18 it's placed, it won't be permitted  
19 MR CROLL In the rear of the courtroom  
20 on the right-hand side, on your right. Anywhere  
21 in the rear would be probably fine  
22 THE COURT. Any objections to that?  
23 MR. PRICHARD Your Honor, I can't  
24 visualize. Does that take the jury out of the  
25 equation? That's all I'm worried about.

1 MR. CROLL Yes, it would.  
2 THE COURT With the representation that  
3 that placement will take the jury out of the  
4 camera's line of vision, or at least preclude them  
5 from being filmed, I don't have a problem with it  
6 being unobtrusively set up behind the bar on that  
7 side of the courtroom. Mr Sheffler, you need to  
8 have --  
9 MR SHEFFLER. I just have one question,  
10 Your Honor. If we're to cross-examine, I mean,  
11 there's not a lot of -- to look at the witness, I  
12 mean, without getting the camera moved over so he  
13 sees the jury, I don't know how he's going to get  
14 a shot, if we're cross-examining or direct  
15 examining. I don't know anything about camera  
16 techniques, but --  
17 THE COURT Nor do I, but I'm going to  
18 expect a demonstration or at least some assurances  
19 to be made concerning --  
20 MR CROLL Well, if we put the camera  
21 on that side of the courtroom, in order to get  
22 whoever is questioning the witness, the shot would  
23 entail probably getting a juror or two in the --  
24 MR SHEFFLER My point is that if  
25 you're shooting this way, and somebody is standing

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1 here, you're going to get their back  
2 MR CROLL Well, you know, you can't --  
3 if you want to choreograph everything, that's  
4 fine. But, I mean, that's --  
5 MR SHEFFLER I mean, what I'm saying  
6 is I would think whoever is doing the examination  
7 is going to want to look at the witness. He's  
8 going to want to stand somewhere here and you --  
9 MR CROLL Based on the limitations of  
10 the courtroom and what you have to work with, I  
11 cannot be getting the jury in, then I would have  
12 to move the camera over this way and compromise  
13 that way.  
14 MR. WILNER Or maybe we'll just shoot  
15 the questioner  
16 MR SHEFFLER. I'm not talking about  
17 shooting the questioner. You're going to have to  
18 get his back. Because if you're shooting the  
19 witness, the questioner is in the line of camera,  
20 you're going to get his back.  
21 MR. CROLL At some point in time  
22 obviously the camera person is obviously going to  
23 have to get footage of the attorney asking  
24 questions, so --  
25 MR SHEFFLER. I don't think you're --

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1 we're not communicating.  
2 MR. CROLL Okay.  
3 MR. WILNER. Your Honor, I propose that  
4 we -- it seems to not have been a terrible  
5 distraction, at least it wasn't to me If it was  
6 to Your Honor I apologize, but I don't care in  
7 terms of whether there is a camera here or not  
8 But it seems to me we ought to, on the basis of  
9 the assurances that they are going to follow your  
10 orders, instruction -- I don't know the details,  
11 but if they don't get good shots, I guess that's  
12 their problem, as long as they don't interfere  
13 with the proceedings So if their -- it seems to  
14 me as long as they are willing to go back there  
15 If they don't get good shots, they don't get good  
16 shots. So, so what?  
17 THE COURT All right Well, Mr Croll,  
18 I'll be in chambers by 8 30 tomorrow morning You  
19 need to direct whomever is going to be responsible  
20 for the placement of that camera to meet me there  
21 and be prepared to demonstrate the unobtrusiveness  
22 of the camera in this courtroom, including the  
23 limitations of the jury not being filmed  
24 MR CROLL All right  
25 THE COURT Request that I will see

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1 counsel in chambers  
2 (Change of reporters)  
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1 counsel in chambers  
 2 (Change of reporters)  
 3 ---  
 4 (In chambers with Mr Maxwell, Mr Cronin,  
 5 Mr Prichard, Mr Parrish, Mr. Bezanson, Mr Forte,  
 6 Juror Prisock present at 5:15 p m )  
 7 THE COURT Okay, let me begin by saying,  
 8 Mr Prisock, you're not in any trouble That's not  
 9 why I've asked you to come back here It came to my  
 10 attention through the bailiff, Mr Forte, that you  
 11 had expressed some concern about the economic  
 12 hardship that was -- that would be caused by your  
 13 participation in this trial  
 14 MR PRISOCK Yes, sir  
 15 THE COURT Do you want to tell me about  
 16 that  
 17 MR PRISOCK I'm in the landscape  
 18 industry And after, of course, I was selected  
 19 today, I went down and called my employer to let him  
 20 know that I was in fact selected on the jury He  
 21 said that he didn't know that he would be able to  
 22 pay me while I was sitting in on the jury And the  
 23 way I see it, \$30 a day definitely would give me a  
 24 financial hardship, you know, compared to what my  
 25 normal salary is

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1 THE COURT All right There is no  
 2 requirement under Florida law that your employer pay  
 3 you for your jury service, or, for that matter, any  
 4 other person who serves on a jury  
 5 MR PRISOCK I understand that  
 6 THE COURT It is a hardship for all of  
 7 the persons that are selected to serve, particularly  
 8 in a trial of this length You cannot be -- well,  
 9 let me put it this way It is a violation of  
 10 Florida law to terminate your employment because of  
 11 your service on the jury You don't anticipate that  
 12 that's --  
 13 MR PRISOCK No, sir, I don't feel that's  
 14 the problem  
 15 THE COURT Was it only after you  
 16 contacted your employer today that you became aware  
 17 that this might be a problem for you?  
 18 MR PRISOCK Yes, sir  
 19 THE COURT Well, with that background  
 20 then I'm going to allow either of the attorneys for  
 21 the parties to inquire of you if they so choose I  
 22 do understand that it's a hardship for you according  
 23 to your representations here today Mr. Prichard or  
 24 Mr Maxwell, do you have any questions?  
 25 MR MAXWELL Mr. Prisock, you're not

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1 going to make as much money serving on the jury as  
 2 you would working; is that right?  
 3 MR. PRISOCK. Correct.  
 4 MR MAXWELL What is the difference, do  
 5 you know?  
 6 MR PRISOCK Probably about \$50 a day  
 7 MR MAXWELL Thank you, that is all I  
 8 have  
 9 MR PRICHARD I have a question Is it  
 10 clear that your employer, is he just singling you  
 11 out or has he done this before? Is it his policy or  
 12 do you know?  
 13 MR PRISOCK. I don't believe he's ever  
 14 had anybody serve on a jury that worked for him  
 15 And since I, you know, was selected and I called him  
 16 and told him -- when I first got my summons, I  
 17 talked to him He said, well, I think we can pay  
 18 you He thought it was going to be a one-day thing,  
 19 so there was no problem Then when I called him  
 20 back this afternoon to tell him that I had been in  
 21 fact selected for the jury, he said, well, I don't  
 22 know if I'm going to be able to pay you or not And  
 23 that would be pretty hard for me  
 24 MR PRICHARD Sure, I understand I just  
 25 wondered, you receive pay for being a juror, \$30 a

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1 day, whatever the amount is, if you would consider  
 2 asking him if you gave him your jury pay if he'd  
 3 give you your regular pay In other words, so  
 4 you're not collecting two paychecks, but so that the  
 5 net difference would come from him  
 6 MR PRISOCK That's not the only  
 7 problem See, this is our peak session also, being  
 8 the landscape industry And he told me he couldn't  
 9 do without me for two weeks  
 10 MR PRICHARD I guess one thing that had  
 11 us all kind of curious -- I hope I'm not speaking  
 12 out of school, but when we asked -- these questions  
 13 were asked of everybody, and yourself included,  
 14 whether it would be a hardship to sit through a  
 15 two-week trial, I'm not sure maybe you heard us ask  
 16 you that or we heard your answer, but I don't think  
 17 it came up.  
 18 MR PRISOCK I never anticipated being  
 19 selected, actually.  
 20 MR PRICHARD You just thought you would  
 21 slide through?  
 22 MR PRISOCK. Right, that's kind of the  
 23 way I figured it.  
 24 MR PRICHARD No one here, of course,  
 25 wants to work any personal imposition on you, and I

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1 hope you understand that On the other hand, I  
 2 think we went through a long process to get down to  
 3 the select jurors that were in the case at great  
 4 amount of time and expense for all concerned, the  
 5 Court's time and the others  
 6 I would ask if it's -- obviously if it's  
 7 so great a hardship that you feel that you can't  
 8 serve fairly as you had indicated you would to all  
 9 concerned that we'd have to take that into  
 10 consideration, I'm sure, but we sympathize with you  
 11 because it's a tough position to be put in  
 12 I don't know what else to say, Judge  
 13 It's a dilemma without a solution  
 14 THE COURT Well, I'll ask the critical  
 15 question, since there's a reluctance on both sides  
 16 on your parts Is this hardship you're going to  
 17 experience, Mr Prisock, which I regret I echo  
 18 counsel's comments that it is one that is  
 19 nondiscriminatory in the sense it's going to be  
 20 suffered by everyone who serves on the jury and is  
 21 also unavoidable  
 22 But is that hardship to you going to be  
 23 such that you do not believe you can sit and listen  
 24 to the evidence in this case and fairly and  
 25 impartially judge it as you are required to do by

1 whether or not the court order parties should try to  
 2 devise a means of lessening the hardship And we'll  
 3 revisit that question in the morning You-all want  
 4 to add anything else to the record?  
 5 MR PRICHARD No, Your Honor  
 6 MR MAXWELL No, Your Honor.  
 7 THE COURT Mr Forte, would you ask  
 8 Mr Prisock to come back in, please  
 9 (Mr Prisock enters)  
 10 THE COURT Mr Prisock, I'm not going to  
 11 be able to excuse you from your jury service I'm  
 12 sorry that it is such that it will work a hardship  
 13 on you I appreciate your candor in telling me that  
 14 and the parties that despite the hardship you  
 15 believe you can be fair, because that's the most  
 16 fundamental issue for these proceedings  
 17 I'm going to continue to give the matter  
 18 some thought, however And I'll require that you  
 19 return with the other jury members tomorrow morning  
 20 at 9 00  
 21 MR PRISOCK Yes, sir, I'll be here  
 22 THE COURT Thank you very much, sir  
 23 MR PRICHARD Perhaps maybe you could  
 24 talk your boss into it between now and then  
 25 MR PRISOCK I don't know He's pretty

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1 your oath?  
 2 MR PRISOCK No, I feel like I can still  
 3 do the job  
 4 MR PRICHARD Your Honor, unless someone  
 5 else has something to offer, could we possibly ask  
 6 Mr Prisock to step outside so we can bring up a  
 7 matter with the Court?  
 8 THE COURT Certainly Mr Prisock, if  
 9 you don't mind Don't leave though  
 10 MR PRISOCK Okay  
 11 (Mr Prisock exits)  
 12 MR PRICHARD May we go off the record,  
 13 Your Honor?  
 14 THE COURT Yes  
 15 (Discussion off record)  
 16 THE COURT Based on discussions with  
 17 Mr Prisock on the record and some-off-the-record  
 18 discussions with counsel about the idea of possibly  
 19 compensating Mr Prisock from some common fund, I've  
 20 decided to allow them and me some additional time to  
 21 consider a proper ruling on this case  
 22 I'm going to require Mr Prisock to return  
 23 in the morning I'll revisit the issue then I  
 24 think the record now, however, is such that there is  
 25 not cause to strike him And the question really is

1 much of a stickler, but I'll try Thank you,  
 2 gentlemen  
 3 THE COURT Mr Forte, I don't need you  
 4 any longer, sir I just wanted you to be present  
 5 MR FORTE May I ask a question? The  
 6 courtroom itself, there looks like there's a lot of  
 7 stuff collecting in there Do you want me to lock  
 8 it up, Judge, so the cleaners won't get in or will  
 9 you be taking that out?  
 10 MR PRICHARD Don't lock it up yet.  
 11 Overnight, once the exhibits are in, I think we'll  
 12 all want it secured because we don't want to haul  
 13 all that stuff back and forth.  
 14 MR FORTE Will you be going back after  
 15 you adjourn?  
 16 MR PRICHARD Yes, sir  
 17 THE COURT All right. We are returning  
 18 to, as I recall, the defendant's objections to the  
 19 testimony of -- deposition testimony of Robert  
 20 Heimann. I believe I last ruled on and heard  
 21 argument on page 54, line 19 through 25, but I'll --  
 22 MR MAXWELL You took that under  
 23 advisement.  
 24 THE COURT. Took that one under  
 25 advisement.

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1 MR MAXWELL That takes us to the top of  
2 page four --

3 MR PARRISH Just to make it clear, I  
4 think it was through 56, line 11 -- line 16 is what  
5 I have.

6 THE COURT Page 54, lines 19 through 25,  
7 page 55, lines 2 through 20 and 25; page 56, lines 2  
8 through 16

9 MR PARRISH I believe that was all under  
10 advisement

11 THE COURT And upon consideration, I'm  
12 going to overrule your objection to those lines and  
13 that proffer

14 MR MAXWELL And if I can just interrupt  
15 you here, maybe I can speed this along Judge, on  
16 page four of the objections, page 57, lines 3  
17 through 15, we will agree to delete that from the  
18 transcript

19 THE COURT All right

20 MR MAXWELL Okay, page 74, lines 20  
21 through 25 -- well, I tell you what, let me just  
22 tell you which ones we will delete, then we can  
23 focus on the ones that are left

24 THE COURT Very good

25 MR MAXWELL Page 85 --

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1 THE COURT Did you skip 74?

2 MR MAXWELL Yes, page 74 and 75 I'd like  
3 to come back to Page 85, lines 20 through 25 --

4 MR PARRISH Pardon me, Greg You threw  
5 me there with the skip

6 MR MAXWELL Page 85, lines 20 through  
7 25, page 86, lines 2 through 13, we will agree to  
8 delete

9 MR PARRISH One more time, I'm sorry

10 MR MAXWELL Page 85, lines 20 through  
11 25, and then page 86, lines 2 through 13 It  
12 appears on page four of your objections We will  
13 agree to delete that from the video

14 And then the next item, page 86, lines 18  
15 through 25, we will agree to delete that from the  
16 video Skipping the next one, come back to page 91,  
17 lines 6 through 25; page 92, lines 2 through 25,  
18 page 93, lines 2 through 5, we will agree to delete  
19 from the video.

20 And the bottom of page five, page 98,  
21 lines 19 through 25; page 99, lines 2 through 9, we  
22 will agree to delete. So that narrows it down a  
23 little bit, Your Honor.

24 THE COURT All right. Let's return then  
25 to page four of the written objections and begin

1 with page 74, lines 20 through 25.

2 MR MAXWELL Yes, Your Honor. Basically,  
3 Judge, what this is, this is just some interjection  
4 here by Mr. Bezanson. You know, I think it's sort  
5 of part of the transcript, I guess he made that  
6 interjection to clarify the record, and I think what  
7 he did was -- I certainly don't have any problem  
8 with it. I think to pull that one little piece out  
9 makes the transcript choppy. I certainly don't  
10 think including that is in any way prejudicial I'm  
11 not really sure why it was objected to

12 MR BEZANSON The designated portion is  
13 the objection

14 MR MAXWELL Well, page 74, lines 20  
15 through 25, where you say, Excuse me, can you tell  
16 us what you mean by consumer Another attorney  
17 said, A person that smokes Mr Bezanson said, A  
18 specific person? Mr. Davis, A user of the product  
19 And the question goes on

20 MR BEZANSON I think that I was trying  
21 to explore whether there was a foundation for  
22 objection to form as to asking for a legal  
23 conclusion

24 This was a consumer expectations case in a  
25 consumers expectation state And it occurred to me

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1 that the question was asked as calling for a legal  
2 conclusion that would be confused as a factual one  
3 I didn't want that to happen I don't think a  
4 lawyer objection or colloquy is appropriate This  
5 certainly wouldn't be read to a jury in the case in  
6 which it was taken

7 MR MAXWELL It may have been There's  
8 no objection here And it just flows It just  
9 makes it easier for the jury to follow the  
10 testimony

11 THE COURT Well, I'm concerned,  
12 Mr Maxwell, about the question on page 75, page  
13 five, Well, you lost me What is the question now  
14 that I am to answer?

15 MR MAXWELL Then he picks up

16 THE COURT Would you expect a consumer to  
17 rely upon your advertisements? Yes, our advertising  
18 is truthful and we anticipate that they would rely  
19 on it if they choose, certainly.

20 MR MAXWELL That part is not objected  
21 to, Your Honor

22 THE COURT But your point is that this  
23 clarifies it, and I'm not sure how it does. I'm  
24 going to sustain the objection to lines 20 through  
25 25 on page 74. I think it is more confusing than

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1 clarifying Page 75, lines 3 through 4.  
 2 MR. MAXWELL That's the same part.  
 3 THE COURT Yes, I'm going to sustain that  
 4 objection Let's move then to page 86, lines 18  
 5 through 25  
 6 I'm going to overrule the objection to  
 7 page 86, lines 18 through 25, and page 87, lines 2  
 8 through 19, and page 88, lines 2 through -- give me  
 9 just a minute I didn't look that far I'm going  
 10 to overrule the objection to page 88, lines 2  
 11 through 22, as well  
 12 MR. MAXWELL That takes us to what I  
 13 think is the last one, page 95, lines 5 through 25  
 14 THE COURT All right, I'll hear any  
 15 arguments you want to offer  
 16 MR. PARRISH Your Honor, he clearly  
 17 refers to Pall Malls, not Lucky Strikes, which is  
 18 the product at issue in this suit It's certainly a  
 19 warning read -- '72 warning, which is, of course,  
 20 the date Grady Carter quit smoking our product  
 21 What they might or might not do overseas is totally  
 22 irrelevant This whole area is irrelevant and calls  
 23 for speculation  
 24 Again they're asking Mr Heimann in 1986,  
 25 long since retired by the company This is a not a

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1 30(b)6 deposition We don't have any documents  
 2 which would bind the corporation  
 3 MR. MAXWELL It's offered to show the  
 4 jury what American's position was during times when  
 5 Grady Carter smoked cigarettes The time period  
 6 somewhat overlaps It's also offered to show that  
 7 they have taken a position that is contrary to a  
 8 number of other well-respected public health  
 9 agencies  
 10 MR. PARRISH Your Honor, not to be picky,  
 11 but I would note, you asked the question -- some  
 12 gentleman did, not Mr Maxwell Page 95 line 19,  
 13 Would you put that warning there if Congress didn't  
 14 require it?  
 15 What they would do in '86 is totally  
 16 irrelevant. He didn't ask the question what  
 17 American's position was nor did he ask the question  
 18 what it was pre-1992. He asked Mr Heimann in 1986  
 19 what he would do that day That's not relevant to  
 20 the issue as to anything Grady even said, and I  
 21 don't agree with that.  
 22 MR. MAXWELL That was their position in  
 23 1986  
 24 MR. PARRISH It doesn't ask that.  
 25 MR. MAXWELL But there was a stipulation

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1 filed to that effect.  
 2 MR. PARRISH I haven't seen it, and  
 3 Mr Bezanson was there  
 4 MR. BEZANSON I don't believe that was a  
 5 fair characterization. I think the stipulation is  
 6 much narrower than that  
 7 MR. PARRISH I can show you -- I read  
 8 carefully the front where they had a colloquy about  
 9 whether it was a 30(b)(6) That was a subject of  
 10 great discussion If you look at page four, line  
 11 nine  
 12 MR. MAXWELL Maybe I can narrow this  
 13 down Here's what I will do I will agree to  
 14 delete from page 95, line 5 to page 95, line 21  
 15 And I think that takes care of that objection  
 16 MR. PARRISH Pardon me, Greg, you'll go  
 17 down to 21 on 95, right?  
 18 MR. MAXWELL Yes, then it picks up, the  
 19 next question then would be that I would want to  
 20 keep in would be page 95, line 22, to page 95, line  
 21 25, and then continuing on page 96 and 97  
 22 I want to delete that one section where it  
 23 refers to Pall Mall and refers to the surgeon  
 24 general's warning I think the other testimony is  
 25 certainly relevant to show what their position is

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1 with respect to whether it is necessary to warn of  
 2 their product and if their product is not injurious  
 3 to health and that they disagree with the surgeon  
 4 general In fact they say he's dead wrong I think  
 5 the jury should hear that  
 6 THE COURT By stipulation, page 95, lines  
 7 5 through 21 have been withdrawn or will be deleted  
 8 from the deposition testimony I'm going to  
 9 overrule the objection to page 95, lines 22 through  
 10 25, page 96, lines 2 through 25, page 97, lines 2  
 11 through 21.  
 12 MR. MAXWELL I think that concludes our  
 13 session  
 14 Bob, here's what I will do I will fax  
 15 you the revised parts, and then I'll have the  
 16 videotape edited, and I'll make a copy for you  
 17 MR. PARRISH Okay, and we'll just take a  
 18 quick look at it.  
 19 Can I create a record that I'm still  
 20 waiting for the documents that I requested in my fax  
 21 of Sunday the 21st. I'm not sure anybody is even  
 22 trying to get those to me, but we still -- my  
 23 paralegal would still like to have them so we can  
 24 have in our possession all of the listed plaintiffs'  
 25 trial exhibits. And I'd like a response, Judge, if

1 I could for the record.

2 MR MAXWELL I will check on that, Bob.

3 I'm not -- I haven't been working on that problem,

4 but I will make an inquiry

5 MR PARRISH Apparently nobody in the

6 world cares about these exhibits but me, but that's

7 been given to me as my job, so I'm trying to

8 complete it

9 THE COURT You have a record

10 MR PARRISH If someone would just give

11 them to me I will quit asking about them I may not

12 quit talking about them, but I'll quit asking about

13 the ones I don't have if I got them all

14 THE COURT I'll see you-all then at

15 9 00

16 MR PARRISH Thanks a lot

17 MR MAXWELL Thank you, Your Honor

18 (The proceedings were adjourned at

19 5 40 p m )

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2 COURT CERTIFICATE

3 STATE OF FLORIDA }

4 COUNTY OF DUVAL }

5 The following individually named reporters  
6 certify that we were authorized to  
7 and did stenographically report the foregoing  
8 proceedings and that the transcript is a true  
9 and complete record of our stenographic notes

10 We further certify the original transcript  
11 herein will be delivered to J W Prichard, Jr.,  
12 Esq., attorney for defendant, for filing with the  
13 court or his safekeeping

14 DATED this 23rd day of July 1996

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16

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(Pages \_\_\_\_\_ through \_\_\_\_\_)  
F Darlene Ricketson

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(Pages \_\_\_\_\_ through \_\_\_\_\_)  
Mary Kamnowski-Huth, RPR

(Pages \_\_\_\_\_ through \_\_\_\_\_)  
Sandra Crowley, CSR, CM